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CROSS-BORDER FRAUD

HEARINGS

BEFORE THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

JUNE 14 AND 15, 2001

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CROSS–BORDER FRAUD: SCAMS KNOW NO BOUNDARIES

THURSDAY, JUNE 14, 2001

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:30 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Carl Levin, Chairman of the Subcommittee, presiding.

Present: Senators Levin and Collins.

Staff Present: Linda Gustitus, Chief Counsel and Staff Director; Mary D. Robertson, Chief Clerk; Laura Stuber, Counsel; Christopher A. Ford, Minority Chief Counsel and Staff Director; Frank Fountain, Senior Counsel to the Minority; Marianne Kenny, Detailee/Secret Service; Susan M. Leonard, Congressional Fellow; Bos Smith, Intern; Alan Stubbs, Detailee/Social Security Administration; Bob Westbrooks (Senator Akaka); and Ian Morrill (Senator Collins).

Senator LEVIN. The Subcommittee will come to order. Today and tomorrow, this Subcommittee will be looking at cross-border fraud. These hearings have been initiated and led by Senator Collins. I thank her for her hard work in this area and so many other areas involving the protection of America's seniors and America's consumers and I call upon her now to give her opening statement. I will follow that up with my opening statement. Senator Collins.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you very much, Mr. Chairman. I would like to begin today by thanking the distinguished Subcommittee Chairman for convening this hearing. As he indicated, these hearings are the result of a 5-month investigation by my staff and they had been scheduled before the change in control of the Senate. Nevertheless, Senator Levin was under absolutely no obligation to proceed and I am very grateful for his willingness to convene these hearings.

In this age of ubiquitous international communications, cross-border fraud has emerged as a serious problem. Foreign countries, and particularly Canada, have unfortunately become a major point of origin for lottery, sweepstakes, and advance-fee-for-loan scams that prey upon Americans through direct mail and telemarketing. Last year, the Canadian Phonebusters fraud hotline alone received information about frauds involving $16 million in losses affecting nearly 5,000 American citizens. The National Association of Attor-

neys General in the United States, moreover, estimates that cross-border fraud costs Americans tens or perhaps even hundreds of millions of dollars each and every year.

Worse yet, such schemes often specifically target the elderly, who are often especially vulnerable and least able to afford being defrauded. A 1997 U.S.-Canadian working group on cross-border telemarketing fraud concluded that senior citizens are over-represented among victims and defenders have admitted to targeting them specifically. Similarly, a survey by AARP found that older Americans are disproportionately victims of telemarketing scams.

Almost all of the elderly victims interviewed by the Subcommittee had suffered a traumatic experience prior to falling victim to a scam. For example, one of our witnesses was distressed over his wife's stroke and was worried about the high cost of her nursing home care. The enticements of a con artist came at a time when he was particularly vulnerable to such a pitch.

Our investigation indicates that the cross-border fraud industry is a fairly sophisticated one. Cross-border fraud very often involves "boiler rooms," in which hundreds of people may be involved, operating out of warehouses in Canada, with dozens of telephone lines, making high-pressure calls perhaps 16 hours out of each day, 7 days a week. Nor do such boiler rooms necessarily operate in isolation. Rather, Canadian telemarketing fraud appears to involve a closely-connected network in which criminals actually share information on successful pitches and purchase and trade victim lists among themselves. Through the use of multiple company names, con artists who pretend to represent different internal offices of the same company, and systems for handing off defrauded victims to other "boiler rooms," fraud rings may be able to swindle the same person time and again.

Cross-border fraud is a growing phenomenon. According to the Federal Trade Commission, U.S. consumers' complaints against Canadian companies rose from nearly 5,000 in 1999 to more than 8,000 last year and are projected to reach more than 10,000 this year. Similarly, the dollar value of losses reported by consumer complaints against Canadian companies rose from $5.3 million in 1999 to $19.5 million in 2000 and is projected to reach $36.5 million this year. As our witnesses today will illustrate, the impact of such fraud upon the lives of ordinary Americans can be devastating, not only to their finances but also to their pride.

One of the most common forms of cross-border fraud is the lottery scam. The smooth-talking cross-border criminals involved in lottery scams convince their victim that he or she has won millions of dollars in a drawing and that the only thing that the victim has to do in order to claim these winnings is, first, to pay legal fees or back taxes or excise fees supposedly due to the Canadian Government. Since there is no lottery and there are no winnings, this ruse far too often defrauds the victim of many thousands of dollars. Our witness today from Acton, Maine, Mrs. Ann Hersom, saw her own family defrauded of several thousand dollars in this fashion, and her family is not alone. There are many more victims in communities all across America.

Another victim was an elderly woman in North Carolina who was tragically defrauded of more than $100,000. A telemarketing

fraud operation based in Montreal convinced her that she had won a lottery and could collect a huge prize if only she paid certain taxes on her winnings. To convince her of their bona fides, they sent her some relatively small items, such as a VCR, which helped persuade her to send them more than $100,000.

The fraud ring that destroyed her financial security was a major one which combined elements of the lottery scam with various other promotional offers, all of which, of course, were no more than cruel illusions. According to documents provided to us by the FBI, this one fraud ring defrauded literally thousands of victims in 18 States and Canada of between $4 and $6 million in the last 4 years.

But this scam was not the only one out there. More seem to spring up every day.[1] Joyce Noble from my hometown of Caribou, Maine, recently sent me a mailing from Toronto that illustrates what may be yet another such fraud. This mailing announced that Ms. Noble was eligible to receive a cash payment of $7,500 and entitled to further awards of up to $500,000. Before this prize could be released, however, the mailing advised that she needed to send an entitlement fee.

Now, this mailing fits a very familiar pattern. It promises considerable payoffs, but not unless the victim pays money up front, which must be returned to an official-sounding location in Canada, denoted by a suite address, which may only mean that it is a simple post office box. The entitlement fee that is listed is $26, in return for which this woman is supposedly eligible for $7,500. I have little doubt that if Ms. Noble had sent in this $26, that she soon would have been told that her chances had greatly improved for a half-million-dollar grand prize, or that she had won it, but that she could collect only in return for yet another even larger entitlement fee. In other words, my constituent would have embarked on a long road of repeated contacts in which she would have been promised ever-greater rewards in return for ever-greater payments.

One convicted cross-border felon had a term for this kind of scam. He called it the "down the road" pitch.[2] It is a method for stringing victims along for long periods of time, getting more and more money out of them at every turn. A handwritten document prepared by this criminal and given to the Subcommittee staff sets out the "down the road" pitch used in his fraud ring. According to this document, a salesman called a "loader" would contact persons who had already sent in money, announcing that they had been selected to participate in an upcoming awards presentation. This loader would send them small gifts of low value to help convince them of his legitimacy and asking for more up-front payments. Subsequently, the loader would call back, happily announcing that the victim had moved up in the standings and now was set to receive an even bigger gift.

The gifts sent to the victim kept getting more valuable, but they never, ever came close, anywhere near the value of the money that the victim kept sending in the hopes of receiving the promised ever-larger grand prize. As this criminal stated, this was totally a

[1] Exhibit No. 1 appears in the Appendix on page 237.
[2] Exhibit No. 5 appears in the Appendix on page 241.

scam because there was never an award presentation, never a million or more in cash and prizes, and we never sent a client any kind of gift that he did not already pre-pay for. These are the kinds of people who set out to victimize innocent Americans such as the three witnesses on our first panel today.

Now, how do we fight such fraud? The first line of defense against cross-border fraud is to promote public awareness of the types of schemes in which criminals like this engage, and we should also help educate consumers on what they can do to report fraudulent overtures and to help law enforcement officials catch up with these con artists.

The second line of defense is to ensure a prompt, aggressive, and efficient response by law enforcement officials. Naturally, this is a particular challenge in cross-border crime fighting for which law enforcement coordination is required among Federal, State or provincial, and local and municipal authorities on both sides of the border. I hope that these hearings will serve as a catalyst for better public awareness, greater consumer wariness, and improved law enforcement cooperation across the U.S.-Canadian border.

Finally, let me note that the relationship between the United States and Canada is an extremely, perhaps even uniquely, good one. As symbolized by the fact that we share the world's largest unguarded border, our two countries have long enjoyed a special relationship of close economic, cultural, and political ties. In fact, in Northern Maine, where I am from, those ties frequently involve family members, as well. My sister-in-law is a Canadian citizen, for example. With the many benefits of these U.S.-Canadian economic and social bonds, however, has come the problem that it is very easy for criminals in one country to defraud victims in the other.

However strong our ties, the United States and Canada remain two separate, sovereign nations, each with its own legal system and each with a law enforcement jurisdiction in some respects off-limits for officials from the other side of the border. Consequently, the challenge of fighting fraud across international boundaries is a formidable one. The physical border is no barrier for scam artists, however, and that is why I am very pleased that Senator Levin is holding these hearings today. Thank you, Mr. Chairman.

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Senator Collins, thank you. Senator Collins has just outlined that cross-border fraud is a real problem. This is true despite significant law enforcement efforts in the last few years and it is also on the rise, as Senator Collins has indicated. We know that there is more money that was lost to these scam artists last year than the year before, and that was true relative to the year before that. These scams frequently involve advance fees for loans, they involve foreign sweepstakes, foreign lotteries that are initiated by people in one country against residents of the United States, usually through phone solicitations, but often in the mail.

The perpetrator of the frauds uses the border as an obstacle to being caught and being prosecuted, and one major border for such activity is the U.S.-Canadian border. This is not now a matter of either us or the Canadians not caring enough. Both our governments care a great deal. But because of the complications of any

border, even between two friends like the United States and Canada, that border is being used by the scam artists as a way of complicating their arrests and their prosecutions. The reason that is true is that law enforcement personnel are faced with multiple extra steps and procedures to bring the perpetrators to justice.

A common practice in a Canadian-U.S. cross-border fraud scheme is for a con artist to operate out of British Columbia or some other province in Canada and make calls to persons in the United States, frequently elderly persons and people who are vulnerable. Using a warm and a friendly style, they offer the U.S. resident some exciting and large financial winnings or an opportunity which requires an up-front payment, which the con artist then claims is necessary for taxes or customs fees or some similar purpose.

We have had many examples of how these con artists work. Senator Collins has just reviewed a number of those examples. The one that I am going to focus on here is a tape which was obtained by Senator Collins' staff, and this tape was made by the daughter of one of our witnesses. The first excerpt which we are going to hear is a tape that was made by Ann Hathaway, the daughter of witness Bruce Hathaway. Now, Ms. Hathaway recorded this conversation on October 15, 1998, with the help of the Ohio Attorney General's Office, and that office will be testifying here later on today.

In this phone conversation, someone who identifies herself as Mary Thompson claims to be from the U.S. Customs Service and she lays out an elaborate and chillingly believable scam to Ms. Hathaway. The woman who calls herself Mary Thompson says that because Ms. Hathaway's father had entered scam sweepstakes and lotteries, that these scam sweepstakes and lottery people had been caught and had agreed to a court settlement of $110,000, to be paid to 1,200 people who lost their money. Now, the catch was that the people who she said were entitled to the settlement money must first send money to Mary Thompson at the U.S. Customs Service to cover the taxes on the settlement amount that they would be receiving, and, of course, nobody ever gets the settlement money. We will play the first excerpt now.

[An audio tape was played.]

Mary Thompson: It's very simple, Ann, I'm going to explain to you from the beginning.

Ann Hathaway: Oh, well, thank you.

Mary Thompson: Your father, your father has got a bad habit to enter sweepstakes and lottery companies. You know those sweepstakes that you get by the mail?

Ann Hathaway: Right.

Mary Thompson: You send $10 dollars, $20 dollars, they promise you money now.

Ann Hathaway: Right.

Mary Thompson: He lost . . . he, he sent quite a bit of money to those sweepstakes and lotteries within maybe 3 years, yes?

Ann Hathaway: Oh, ok.

Mary Thompson: What happened is that those companies are illegal. They promise him money, they never send him anything, so those companies were seized. I've got some lists here that I, I did send your father——

Ann Hathaway: Yes.

Ms. THOMPSON [continuing]. Of the companies that were seized, and those companies were brought to court. It was a class-action suit done against them, and finally they decided to, with the money they made with that, to send it back to (uh) some people in a lot of countries.

Ann Hathaway: Yes.

Mary Thompson: People from Australia, United States, and Canada who were playing those sweepstakes and lotteries. It is very hard for them to send like $10, $20, or $40 back to 30 million people. I would have to call everybody and say, "OK, how much did you lose? We're gonna send it back to you." So what they decided to do instead is offer a court settlement of $110,000, ah, to about, let me see, it's about 1,200 people that are going to be getting that money, OK? What they did is they called your father up, there's an attorney by the name of Robert Duran, which I didn't know. They called him up, and they told him about that story. And he said, "Listen, you have to pay taxes on that."

Ann Hathaway: Yes.

Mary Thompson: Because it's coming from another country. I'm at the United States Customs Office. So what we did is we confirm everything with Mr. Duran, and your father sends in $2,000 for his taxes because he's a senior citizen and he's able to pay the balance only after he receives the court settlement.

[End of recorded tape.]

Senator LEVIN. Now, in the second excerpt, which Ms. Hathaway recorded on November 25, 1998, Ms. Hathaway is now speaking with a person who identifies himself as Mark Davis. He says he is the associate of Mary Thompson, who we just heard in this first excerpt. Mark Davis says that he is the owner of a law firm which is handling the settlement. On the phone is also someone called Mr. Taylor, who Mark Davis says is an attorney at the law firm.

Both Mary Thompson and Mark Davis have explained to Ms. Hathaway that there are additional settlements for her father to claim. Ms. Hathaway has been told that her father is now entitled to $170,000 from a settlement, but Ms. Hathaway or her father must pay first $78,000 before they receive any money. Neither Ms. Hathaway or her father paid at the time of the following conversation, when Mark turns up the pressure and tells Ms. Hathaway that he is losing money as a result and is upset that she has not paid. So now we are going to hear that piece of the conversation, first hearing from someone who is identifying himself as Mark Davis.

[An audio tape was played.]

Mark Davis: Now, I know that (uh) you spoke with Mrs. (uh) Thompson, and she was expecting those payments, and all the time something happened. Now, you have to know that we're running late, and every day that passes by I'm paying interest for that money that is (uh, uh) held at U.S. Customs.

Mr. Taylor, an associate fo Mark Davis, in the background: That's right.

Mark Davis: And here, at the law firm, we're not too crazy about this. So this is why I'm trying to find answers and I'm trying to find some solutions to get through this so you can have the money already.

[End of recorded tape.]

Senator LEVIN. Fortunately, Ms. Hathaway did not send the money, but her dad had already sent $47,000 to these people and never received one cent in return. These crooks are still at large. They are probably making calls similar to the ones that we have just heard.

In addition to hearing from Mr. Hathaway, we are going to be hearing from two other victims of similar scams, including a witness from Michigan, Mrs. Julia Erb, who I met yesterday with her daughter. She is going to describe how she lost $2,971 from similar calls informing her that she had won a lottery but needed to send money to cover the taxes that she would first have to send in, because those taxes would have to be paid on the money.

[The prepared statement of Senator Levin follows:]

PREPARED OPENING STATEMENT OF SENATOR LEVIN

Today and tomorrow this Subcommittee will be looking at cross-border fraud. These hearings have been initiated and led by Senator Collins, and I thank her for her hard work in this area and so many other areas involving protection of America's consumers and seniors.

Cross-border fraud is a serious problem that, despite significant law enforcement efforts in the last few years, is still on the rise. When I say "cross-border fraud" I am describing scams involving advance fees-for-loans, foreign sweepstakes, and foreign lotteries that are initiated by persons in another country against resident sof the United States often through phone solicitations, sometimes through the mail. The perpetrator of the fraud uses an international border as an obstacle to being caught and prosecuted. One major border for such activity is the U.S.-Canadian border. Victims in our country often think it isn't worth the trouble to seek a remedy, and law enforcement personnel are faced with multiple extra steps and procedures to bring the perpetrators to justice. Perpetrators rely on this reality to escape prosecution.

A common practice in a Canadian-U.S. cross-border fraud scheme is for a con artist to operate out of British Columbia or some other province in Canada and make calls to persons in the United States who are most often elderly. Using a warm and friendly style, they offer the U.S. resident some exciting and large financial winnings or opportunity which requires an up-front payment of a significant amount which the con artist claims is necessary for taxes or customs fees or similar purpose.

The FTC estimates that the dollar loss reported by U.S. consumers with respect to Canadian companies for FY 2000 was $19.5 million, and for FY 2001, the FTC estimates that number will rise to $36.5 million. And these are just the reported losses. Many people don't even report their losses, because of the embarrassment of having been duped.

We have a first-hand example of how these con-artists work their persuasive talents over the phone. It comes from a tape made by the duaghter of one of our witnesses. The first excerpt we will hear was taped by Ann Hathaway, the daughter of witness Bruce Hathaway. Until recently, Miss Hathaway was a Michigander. She moved from Michigan to Ohio in 1998 to take care of her parents. Miss Hathaway recorded this conversation on October 15, 1998, with the help of the Ohio Attorney General's Office.

In this conversation a "Mary Thompson," who claims to be from the U.S. Customs Service lays out an elaborate and chillingly believable scam to Ms. Hathaway. Mary Thompson says that because Miss Hathaway's father entered illegal sweepstakes and lotteries (foreign sweepstakes and lotteries are illegal for U.S. citizens to play) in the past, these lottery and sweepstakes companies have agreed to a court settlement which will pay $110,000 to 1,200 people who have all lost money in the past due to participating in foreign lotteries and sweepstakes. The catch is that the people who are entitled to the settlement money must send money to Mary Thompson at the U.S. Customs Service to cover the taxes on the settlement amount that they will be receiving. Of course, no one ever gets the settlement money.

Conversation No. 1

Mary Thompson: It's very simple, Ann, I'm going to explain to you from the beginning.

Ann Hathaway: Oh, well, thank you.

Mary Thompson: Your father, your father has got a bad habit to enter sweepstakes and lottery companies. You know those sweepstakes that you get by the mail?

Ann Hathaway: Right.

Mary Thompson: You send $10 dollars, $20 dollars, they promise you money now.

Ann Hathaway: Right.

Mary Thompson: He lost . . . he, he sent quite a bit of money to those sweepstakes and lotteries within maybe 3 years, yes?

Ann Hathaway: Oh, ok.

Mary Thompson: What happened is that those companies are illegal. They promise him money, they never send him anything, so those companies were seized. I've got some lists here that I, I did send your father——

Ann Hathaway: Yes.

Ms. THOMPSON [continuing]. Of the companies that were seized, and those companies were brought to court. It was a class-action suit done against them, and finally they decided to, with the money they made with that, to send it back to (uh) some people in a lot of countries.

Ann Hathaway: Yes.

Mary Thompson: People from Australia, United States, and Canada who were playing those sweepstakes and lotteries. It is very hard for them to send like $10, $20, or $40 back to 30 million people. I would have to call everybody and say, "OK, how much did you lose? We're gonna send it back to you." So what they decided to do instead is offer a court settlement of $110,000, ah, to about, let me see, it's about 1,200 people that are going to be getting that money, OK? What they did is they called your father up, there's an attorney by the name of Robert Duran, which I didn't know. They called him up, and they told him about that story. And he said, "Listen, you have to pay taxes on that."

Ann Hathaway: Yes.

Mary Thompson: Because it's coming from another country. I'm at the United States Customs Office. So what we did is we confirm everything with Mr. Duran, and your father sends in $2,000 for his taxes because he's a senior citizen and he's able to pay the balance only after he receives the court settlement.

[End of tape]

In the second excerpt, which Ms. Hathaway recorded on November 25, 1998, Ms. Hathaway is now speaking with a "Mark Davis" who says he is an associate of Mary Thompson, whom we heard in the previous call. Mark says that he is the owner of a law firm which is handling the settlement. On the phone is also a "Mr. Taylor" who Mark Davis says is an attorney at the law firm. Both Mary Thompson and Mark Davis have explained to Miss Hathaway that there are additional settlements for her father to claim. Miss Hathaway has been told that her father is now entitled to $170,000 from a settlement, but Miss Hathaway or her father must pay $78,000 before they receive any money. Neither Miss Hathaway or her father have paid as of the time of this call, and in the following conversation, Mark turns up the pressure and tells Miss Hathaway that he is losing money as a result and is upset that she has not paid.

Conversation No. 2

Mark Davis: Now, I know that (uh) you spoke with Mrs. (uh) Thompson, and she was expecting those payments, and all the time something happened. Now, you have to know that we're running late, and every day that passes by I'm paying interest for that money that is (uh, uh) held at U.S. Customs.

Mr. Taylor, an associate fo Mark Davis, in the background: That's right.

Mark Davis: And here, at the law firm, we're not too crazy about this. So this is why I'm trying to find answers and I'm trying to find some solutions to get through this so you can have the money already.

[End of tape]

Fortunately, Ms. Hathaway did not send any money, but her father had already sent $47,600 to these people, and he never received one cent in return. Although the Ohio Attorney General's office tried to go after these crooks, they were not able to prosecute them because they were located in Canada. So these crooks are still at large and are probably making calls similar to the ones we just heard.

Today we will also be haring from two other victims of similar scams, including a witness from Michigan, Mrs. Julia Erb, who will describe how she loast $2,971 from similar calls informing her that she had won a lottery but needed to send money to cover the taxes she would have to pay on the money.

I thank these witnesses for having the courage to come forward and tell their stories. In doing so they will help others to avoid being victimized by these criminals. And, again, I thank Senator Collins for identifying this issue for the Subcommittee and for the work she and her staff have done to make these hearings possible.

Senator LEVIN. I want to thank our witnesses today for having the courage to come forward to tell your stories. It is not easy to do what you are doing today, but in doing this, you are going to be helping to prevent other people from being victimized the way you were by these criminals.

Again, before I swear our witnesses in, which is traditional for this Subcommittee, I want to thank Senator Collins. It is her energy, her effort, and her staff work, in addition to her own, which have made these hearings possible and which hopefully will reduce the number of people who are taken advantage of by these scam artists and these crooks.

So if our witnesses would now all stand and raise your right hands. Do you swear that the testimony you will give before this Subcommittee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mrs. ERB. I do.

Mr. HATHAWAY. I do.

Mrs. HERSOM. I do.

Senator LEVIN. Why don't we call on you, Mrs. Erb, first. I am trying to figure out some rhyme or reason to the order in which we will call our witnesses, so we will do it alphabetically.

TESTIMONY OF JULIA ERB,[1] KIMBALL, MICHIGAN

Mrs. ERB. Senator Collins and Senator Levin, my name is Julia Erb and I'm a resident of Kimball, Michigan, which is about 60 miles from Detroit. I have lived in Kimball for the past 12 years with my husband, Ed. I have six grown children. I might say four were born in Canada, and it says 14 grandchildren, but I also have three more as of last Monday—my son adopted them—and five great-grandchildren. I've been a small business owner and am now retired.

Starting on November 17, 2000, I began receiving phone calls from persons telling me I had won various prizes. I don't know why I started to get these calls. The people on the phone sounded sincere and very excited. They asked me to send money to cover various expenses in the delivery of cash prizes, and I did, using my Visa credit card, which I am usually very careful of because I like to pay it off every month. Then I also started sending cashier's checks. I never received any of the promised prizes. I can't believe I did this, but in order to stop other people from my situation, from doing what I did and losing money—I lost a total of almost $3,000, which is a lot for me because I had a stroke a few years back, which cost a lot—I would like to describe several of my experiences for the Subcommittee.

My first encounter was November 17, 2000. I was called by a Roy Taylor, who said he was calling from the First Liberty Exchange Bank of Carson City, Nevada, phone number 1–800–223–6971. He said I had won $60 million prize money. He said there were ten contestants drawn down to three who would win, but I came in first. I asked him if he was kidding and how many zeroes that was, and he laughed and said, "Six." I said, "You're kidding, right? What do I have to do?" He said, "Just be there." Then he asked me for

[1] The prepared statement of Mrs. Erb appears in the Appendix on page 65.

my Visa credit card number and I gave it to him. He said I would be receiving 99 British Sterling bonds which were worth $60 million, that I would receive $1,800,000 to start and that I would get $10,000 every month after January 1, 2001.

He then switched me to a Jeff Lee, who said I had entered a sweepstakes several weeks ago, which I didn't remember. Mr. Lee asked me if I had just spoken with Roy Taylor. I said, "yes," and he said he would explain what happened next. He said I would receive a package in 3 or 4 weeks verifying who I am and that I am Julia Erb of good address and I had won $60 million. He said it would be 99 units of British Sterling premium savings bonds and that I would have a one-time legal fee of $1,498 which would go to the lawyers who would put the money in my name on the bonds for me. He asked me if I could manage that or did I need more time.

He told me it was important that I not tell anyone about this. I was beside myself. He also said it was imperative for security reasons to speak to a Mr. Jordan Richards, who would record our conversation. He said I was to answer only "yes" or "no." Mr. Richards repeated the terms of payment, asked if I understood what I was saying, and I answered, "Yes."

Then Mr. Lee, who is a real gentleman, came back on the line and said my package would arrive in 3 or 4 weeks. I was to sign the papers they identified and phone him when I got the package. I was surprised I could read my notes as I scribbled any which way while holding the phone. I could hardly write, I was shaking so.

I called Mr. Lee again on November 30, 2000, because I was concerned that my Visa showed that the $1,498 was going to a Hyperion Bank in Kansas City, yet he was calling me from a First Liberty Exchange Bank in Carson City. He laughed and said, "Yes, dear." I only answered, "Yes, dear," too. He got a laugh out of that, and I said I was so hyper I'd say just about anything. He said not to worry, that he had many banks and that the one—that was the one he used. He reminded me again to call him as soon as I received my package and told me not to worry and to take it easy. He was very gracious.

I did get worried, however, and called First Liberty Exchange Bank on December 19, 2000, after I didn't receive any package. I got a Mr. Redfield, who said he was the president of the bank. Mr. Redfield told me that Mr. Lee was no longer there. I told Mr. Redfield about our conversation and that the $1,498 was charged to my Visa but I hadn't received a package. He said he'd take care of it.

I received a package about 1½ weeks later which congratulated me and told me I now had a "personal, exclusive two-year Premium Bond Membership package." I immediately called Mr. Redfield and said I had the bond package. He told me to sign the two papers in the package and mail them right back to him, which I did. The papers I sent confirmed that on November 17, 2000, Hyperion Bank had drawn $1,498 from my Visa account, which would enroll me in the premium bond program, which would entitle me to win $60 million. The letterhead on the package showed the address from Nicaragua, but Mr. Redfield told me to return the signed pa-

pers to him in Carson City. I never received any money. I phoned the bank in Carson City, but the number was disconnected.

My second experience occurred in March of this year. I thought I was just lucky to get another call. On March 1, 2001, at 5:45 p.m., I was called from Australia by a John Turner who said I was in a drawing that was held every 10 years, 1971, 1981, 1991, and 2001. He said this was an Australian international lotto. The drawing was to be held on Saturday, March 3, 2001, at 8 p.m. A Michael Wilson came on the phone and gave me a number which he said to tell no one. Number 25185 was the number and the payoff would be $50 million. I was to send $445 (plus $20 I paid to Fed Ex) in a cashier's check for a chance to win to World Marketing Service in Vancouver, Canada. I never did receive anything.

The next encounter occurred on Wednesday, March 7, 2001, when an Andrew Dalton called me from Australia and said I had just won the top prize of $10 million now and $10 million in the future. Alan Wilson then called me and said he was working with Andrew Dalton. Alan asked me if I was a U.S. citizen or if I had ever been to Australia. When I told him I had never been to Australia, he told me I should come to visit and he would take me around.

Alan called me every night for about 2 weeks and asked whether I had sent the money and to talk. According to Alan, I needed to send him $498 for legal fees to pay the Australian income taxes on my winnings. Alan would call around 9 p.m. every night. When the phone rang around 9 p,m,, I would look at my husband and say, "That must be Alan." One night, my husband and I went to church and when we got home, the phone was ringing. It was Alan. He said, "Where were you? I tried to reach you several times tonight." I told him I had been to church. Alan said, "You are a lovely lady." I believe he was a criminal with a conscience. I think he felt bad about what he was doing. I really did, from his voice and all, but then again, that's their selling point.

On March 7, 2001, I sent a cashier's check for $498 to R.M.G., in Vancouver, British Columbia, Canada. I received nothing in return. A few days later, Alan stopped calling.

The fourth encounter involved a Mario Lopez from Madrid, Spain, at 8:30 p.m. on March 8, 2001. Mario told me he knew Alan. Now, Mario said that King Carlos and Queen Sophia had a two-person drawing and I was one of the two winners, the other person being in California. He said the amount of the winnings was $200,000—we're getting cheaper—and he would send it to me within 1 month by Federal Express.

He said I was chosen completely at random because of the way the Americans helped Spain and they wanted to give back to the United States and he needed $1,900 from me. When I told him I couldn't afford that, he said I could win $2,000 [sic] and ten free tickets to El Gordo, the Spanish lottery. He then said, "Well, send $500," which would cover the amount it would take to exchange $200,000 to American dollars from Spanish money at Banco Expano. I sent a cashier's check for $500 to R.M.G., Suite 277, 3351 Kingsway, Vancouver, British Columbia, Canada, V5R5K6. He gave me his phone number, which I never called, since he said it was $9 a minute.

I have not received any money that I was promised. I lost only a total of almost $3,000, and I feel terrible, but that was a lot of money to me at this time. I can't believe I was so stupid to have done this. I just wanted to provide for my children and grandchildren. My husband and I don't need anything at this age, but I thought I could do something for them.

They did it very cleverly, as my bonds had to be in for a complete month, which wouldn't be until February 2001, and then March would be the drawing. It was very stupid of me and I felt I was just lucky. I had prayed always for a way to help my family, and I believed I could after paying the income tax on all this money, and here I am, broke. Thank you.

Senator LEVIN. Thank you. Your extraordinary good nature was taken advantage of, and somehow or other, you've been able to retain it.

Mrs. ERB. Well, lots of kids around.

Senator LEVIN. I was just chatting here with Senator Collins, that you could believe somehow or other that he felt badly about scamming you is the scam.

Mrs. ERB. I don't any longer.

Senator LEVIN. Believe me, he didn't feel the slightest bit badly about scamming you.

Mrs. ERB. They're probably actors, very polished.

Senator LEVIN. Yes, and that is the problem that they are credible and they make people believe who are trustful people like you.

Mrs. ERB. Well, I had hoped I could help my family. I really did. Well, I'm not much help this way.

Senator LEVIN. Well, I am sure you are helping them in a lot of other ways, indeed.

Mr. Hathaway, let me call upon you next. You are from Columbus and we appreciate you and our other witnesses traveling here to discuss this issue, and again, I know it is not easy to talk about these things, but you will be saving a lot of other people from being scammed the way you were. We also appreciate, as Mrs. Erb did, trying to do your statement in no more than 10 minutes because of our time constraints, and we may be interrupted at any time, as a matter of fact, to have to run over for a vote or two votes. Mr. Hathaway, would you proceed?

TESTIMONY OF BRUCE HATHAWAY,[1] COLUMBUS, OHIO

Mr. HATHAWAY. I would like to thank the distinguished Members of the U.S. Senate Subcommittee for providing me the opportunity to speak with you today. My name is Bruce Hathaway. I am 83 years old, a certified public accountant and Lieutenant Colonel in the U.S. Air Force, retired. I have come before you today to share with you my experiences as they relate to cross-border telemarketing fraud.

My wife, Helen Hathaway, has been confined to a nursing home since March 1997. Unfortunately, my health insurance did not cover long-term aftercare, and I was forced into a costly self-pay situation regarding her care. Shortly after her admittance, I began entering direct mail sweepstakes, hoping that winnings could be

[1] The prepared statement of Mr. Hathaway appears in the Appendix on page 68.

used to offset the burden of these additional expenses. As my participation in these sweepstakes increased, so did the frequency in which these solicitations were received.

Over the next year-and-a-half, I spent nearly $10,000 entering sweepstakes. On several occasions, I believed I had won a substantial amount of money, later to find out I had been deceived. I have since learned that it was my participation in these sweepstakes that made me vulnerable to future telemarketing scams.

In August 1998, I received a phone call from an individual identifying himself as Robert Duran, an attorney with the Canadian law firm of Rudel, Wiseman and Associates, informing me of a $90 million settlement resulting from a class action lawsuit against a group of United States sweepstakes companies who were defrauding Canadian citizens. By utilizing information they obtained from the United States sweepstakes companies, I had been identified as one of many American citizens who had been victimized by these companies. Further, having reimbursed all of the Canadian parties involved, I was entitled to $110,000 as my share of the remaining monies awarded their firm for disbursement.

I received a call from a woman identifying herself as Mary Thompson with the Canadian Tax Bureau. She called regarding 7 percent tax required before these monies could be released to me. I asked if this amount of $7,700 could be taken out prior to sending me the settlement, but she said that would not be possible. I then requested that upon receipt of the settlement, I could forward a check to cover the taxes, but again, she refused. Since we could not reach an agreement, she said she would talk to her superiors about releasing these monies.

Her return call concluded I could pay $2,000 up front with the remaining $5,700 to be due 15 days after receiving the settlement check. I acquired a cashier's check in the amount of $2,000, payable to Tony Wiseman, and mailed it to a couple in Montreal as instructed.

Several days later, I received another call from the Canadian Tax Bureau, this time from a man identifying himself as James Jann. He informed me that my settlement check was being withheld pending the addition of another $170,000 claim. He also informed me that these monies were subject to the same 7 percent tax rate. I asked if I could wait until I received the first $110,000 check before paying the 7 percent tax on the second $170,000. He said this was not an option, as there had already been one check issued in the amount of $280,000, the sum of both settlement checks. However, I could pay $3,000 now and the remainder upon receipt of my settlement check.

This time, I sent a cashier's check in the amount of $3,000 made out to Julie M. Wilson and mailed to Gloria Sax, her assistant in Montreal. I was told that I would receive my $280,000 check delivered by armored car between October 5 and October 9, 1998, and that the driver would accompany me to the bank to deposit the check directly into my checking account or savings account. He reminded me that upon receipt of these monies, I would be asked to pay the amount of $14,600, which was 7 percent owed in taxes less the $5,000 that had been paid. I mailed the check and waited for

the beginning of October and the receipt of the settlement check, as promised.

On September 29, 1998, I received a call from John Taylor, who purported to be with the U.S. Customs Department. He indicated that he had my $280,000 settlement check. He said before these monies could enter the United States, I had to pay a 10 percent Customs fee, the taxes of 7 percent and Customs fees of 10 percent. Mr. Taylor said the total was $42,600 owed, which was $14,600 for taxes and $28,000 for Customs fees. Adding the $5,000 in taxes that I had already paid, the grand total was $47,600.

I have asked my daughter to accompany me here today because, as my caregiver, she is a victim of these circumstances, as well. Had it not been for her intervention, the involvement of the Ohio Attorney General's Office, and the combined efforts of Robert E. Morgan and Edward J. Earley, the scam artists would have continued trying to exploit more taxes and fees from me.

That ends my brief. This has been an honor and a privilege for me to be here today. I am confident your thoughts will be with all of the senior citizens across our country that have or will have fallen victim to similar scams. If it is true that these criminals are seeking refuge in Canada, using the United States-Canadian border to avoid detection, apprehension, and prosecution from the United States law enforcement, please continue your efforts to better the communications and assistance needed from the Canadian authorities. Thank you.

Senator LEVIN. Thank you very much, Mr. Hathaway, for coming forward with this story, which I know is painful to you and your family, and we thank you and your daughter both.

Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman. It is a great pleasure for me to introduce the final witness on this panel, Mrs. Ann Hersom, who is from Acton, Maine. That is a small community in Southern Maine, in York County, and it is a great pleasure to have Mrs. Hersom here today. We had a chance to visit yesterday and I want to echo the thanks of our Chairman to all three witnesses for having the courage to come forward. Mrs. Hersom, we look forward to your testimony, if you would like to proceed.

TESTIMONY OF ANN HERSOM,[1] ACTON, MAINE

Mrs. HERSOM. My name is Ann Hersom. I appreciate this opportunity to address the distinguished Members of the U.S. Senate Permanent Subcommittee on Investigations regarding how my family was victimized by cross-border telemarketing fraud.

I am a 62-year-old business woman and my 80-year-old husband is retired. I have owned a small gift shop in downtown Sanford since 1994. My husband, Mr. Leon Hersom, was initially contacted sometime in 1997 through mail solicitations offering chances in foreign lotteries. I really did not pay much attention to what my husband was doing until 1998. I suffered an injury to my back in January 1998 and had surgery in August 1998. Since 1999, I have remained at home, caring for my husband and 20-month-old grandson. My son took over the day-to-day operations of my business.

[1] The prepared statement of Mrs. Hersom appears in the Appendix on page 74.

Since remaining at home, I became aware that my husband was receiving numerous telephone calls during the day from telemarketers. I could not help but notice the calls. They would start at 7 a.m. and continue until 9 p.m. at night. It was only then that I discovered that my husband had been sending money to Canadian telemarketers and sweepstakes drawings in the United States in the belief that he had won a lottery and needed to pay the taxes on the winnings.

While I have no exact way of knowing how much my husband actually sent these people, I believe our financial loss is between $15,000 and $20,000. For the records I could piece together, I know that my husband wired via Western Union $2,700 to specifically pay for the taxes on his winnings. In one instance, he wired $1,500, which was all of our income for that month.

I am sure you can understand how hard it is to manage when all your money has been thrown away. After I became aware of this situation, I reviewed our checkbook and credit cards and found numerous checks and credit card charges made out to these people for $300 to $500 at a time. It was so bad that I took the checkbook and the credit cards away from him.

I then discovered that my husband was obtaining cash and mailing that directly to Canada. When he was unable to obtain cash, he would take his medical insurance reimbursement checks from the mail, sign them, cash them, and send the money to people in Canada and the United States. My husband would receive approximately 20 sweepstakes mailings on Monday and five to ten sweepstakes mailings the other days of the week. These sweepstakes mailings would be from all over the world telling my husband that he had won the lottery and just had to pay for processing fees.

Many of the mailings had catchy slogans: "You are a winner of $1 million and all you have to do is pay $19.95." Many of the tactics from the mailings and telemarketers are also,—"This is a one-time only offer, you can only do this today," "you mean you don't want to win all this money?" and "you could really use this money, couldn't you?" These tactics prey on people's minds. Senior citizens need to be made aware that they don't have to pay to win something.

We have started to receive telephone calls at our home from people with foreign accents. The telephone operator will say, "You have an international collect call, will you accept," and before I can say no, someone with a foreign accent will say, "Pick up the phone, Mr. Hersom.", say "yes, Mr. Hersom." This has been very, very frustrating—I try to always be the one to answer the phone.

My husband still insists that he will win "the lottery" and even opened a postal box, unbeknownst to me, in order to continue to receive "lottery" information. I don't think I can fully explain how surprising and frustrating this experience has been.

My husband was a businessman for many years who owned his own lumber business. My husband was always very intelligent and was good at making smart decisions. He is not the type of man I would have imagined could fall for a con artist. However, my husband is not in good health. He suffers from congestive heart failure and is on oxygen 24 hours a day. With the onset of his illness, it also appeared as though he became exceedingly concerned about

having enough money to pay for his ongoing medical treatment, as well as to meet normal living expenses.

I believe that as people get older and they can no longer work to support themselves, they become fearful of how much money they will have and how they will be able to manage. Senior citizens are afraid that their money will not last as long as they will. This is a deep-seated fear that younger people—who are able to work, to make more money if they need to—do not fully understand. I think these telemarketers prey on this fear to the point that people respond to an enticement that under normal circumstances would not make sense. Even now, I still monitor the mail and telephone calls to ensure that telemarketers are not getting to him.

This entire experience has been extremely hard on our marriage. At one point, in desperation, I told him I would leave him if he didn't stop. Even today, after everything we have been through—he still believes he can win the lottery. Or that he has already won and merely has to pay a processing fee.

I hope my remarks today may alert potential victims to this type of fraud. More importantly, I hope that spouses, brothers and sisters, and children of the elderly pay attention to their loved ones and become involved in their life in order to prevent some telemarketer from defrauding them. Many senior citizens are alone and fearful. They are easy targets for telemarketers, whose scripted calls appear to offer friendship but only play on senior citizens' fears in order to steal their life savings.

I want to say today to everyone that "if it sounds too good to be true, it is." I also want to say that senior citizens should not be embarrassed to talk about this with their families. Their families can help them to understand that this is not their fault. They are being preyed upon by these telemarketers and what is needed is more people to know about this so that it can be prevented in the future.

Senator LEVIN. Mrs. Hersom, thank you for coming forward. Thank you for your wise advice at the end of your statement. I just wish everybody who receives a phone call could hear that advice.

The purpose of these hearings, as Senator Collins has mentioned, is in part, at least, to spread the word about these crooks and to try to prevent people from being taken in. There are other purposes, as well, in terms of oversight of how our laws work and possible legislation, but this is one of the primary purposes of this hearing and these hearings which Senator Collins has scheduled.

We will now go and vote. We will be back, hopefully—are there one or two votes, do we know? It is two votes, which means we could be gone possibly 20 minutes. We will resume with questions when we come back, so the three of you feel free to get up and move about, but we will proceed with questions of the three of you briefly, and then we will move to our second panel, upon our return. Thank you.

[Recess.]

Senator COLLINS [presiding]. The Subcommittee will come to order. As we are waiting for Senator Levin to return, he has agreed that I can proceed with some questions.

I first want to thank all three of our witnesses for their very compelling testimony. As we have mentioned several times, we hope that people who hear your tragic stories will be far more care-

ful when they receive telemarketing calls or direct mail solicitations about sending money, particularly when they do not really know who is on the other end.

I would like to ask all three of you the same question to start off with—Mrs. Hersom, I will start with you. Did your husband recover any of the money that he sent?

Mrs. HERSOM. No, he didn't.

Senator COLLINS. Mr. Hathaway, did you get back any of the money that you sent in response to the solicitations?

Mr. HATHAWAY. I am sorry, I didn't hear all that.

Senator COLLINS. I am sorry. Did you recover any of the money that you sent to these telemarketers?

Mr. HATHAWAY. No.

Senator COLLINS. Mrs. Erb, did you ever recover any of the money that you sent?

Mrs. ERB. No, I haven't.

Mr. HATHAWAY. Not one dollar.

Senator COLLINS. So all three of you, to this very day, have sustained these losses and not recovered a cent, is that correct?

Mrs. ERB. That's true.

Senator COLLINS. And I think that highlights one of the problems that we have here, because unfortunately, the prosecution of cross-border fraud is very complicated because of the different countries' law enforcement systems that are involved, which make criminals very difficult to pursue and makes it very difficult to recover money for those who have been defrauded. I think that is an important lesson, as well.

Mrs. Hersom, how difficult is it for the loved ones of a victim to deal with this issue? You talked a little bit about that in your testimony. Could you talk a little bit more about what it was like for you when you discovered that your 80-year-old husband had apparently been sending money without your knowledge?

Mrs. HERSOM. Well, when I first realized he was doing this, I was in a state of shock because I couldn't believe that he would do something like this, because he has always been the type of person that if he heard that this was happening to someone else—when he was probably 10 years younger—he would have been shocked, because he's just not the type of person to do this. And it's so frustrating to know that someone is doing this and that there's nothing you can do about it.

Senator COLLINS. And if you hadn't happened to have been injured and been home when these calls and other solicitations were coming, you might never have discovered this.

Mrs. HERSOM. I might never have discovered it.

Senator COLLINS. And to this day, you testified that your husband believes that he is likely to win one of these Canadian lotteries, is that correct?

Mrs. HERSOM. I think he really does believe it.

Senator COLLINS. Still believes. And what do you think made him vulnerable? As you pointed out, he was a businessman. Was it his illness? Was it concern about finances? What seems to have been a factor in the other cases we have heard, is either wanting to do something nice for your family, as in the case of Mrs. Erb—or in Mr. Hathaway's case—concern about the very large nursing

home bills that his wife was incurring. In your case, what do you think made your husband particularly susceptible to these kinds of fraudulent pitches?

Mrs. HERSOM. I think, for one thing, he may have been lonely, because he was home alone all the time and these people offered him friendship. And I think he was concerned that he had a lot of medical expenses. I think as senior citizens get older, they start worrying about how long they're going to live and is their money going to hold out, and, of course, he knew that I'm about 18 years younger than he is, that I would need some financial support after he goes.

Senator COLLINS. One of the parts of this whole problem that is most troubling to me is that these con artists are preying on very good intentions of people and people's trusting nature. They are taking advantage of people who want to make sure that their families are provided for and that their bills are paid when they are incurring high medical expenses. That is what makes this even more deplorable, because these con artists really are hitting people when they are vulnerable.

Now, Mrs. Hersom, most Americans do not realize this, and I think this is part of the problem, but it actually is illegal for someone to sell you a foreign lottery ticket in the United States. So any offer that comes from a Canadian source offering a lottery ticket is illegal. Were you aware of that?

Mrs. HERSOM. I was aware of it, but my husband wasn't, and when I found out this was going on, I told him that this is illegal.

Senator COLLINS. Finally, I would like to ask all three of you, what do you think we should do—perhaps in conjunction with law enforcement officials or groups like AARP—to try to alert senior citizens about the dangers of these scam artists? Do you think, for example, that public service announcements on television should tell people that lottery tickets from other countries are illegal or that they should be careful in sending money when they do not know who is asking you for it? What do you think would be helpful and might have helped in your personal case? Mrs. Hersom.

Mrs. HERSOM. I think anything that can be done would help. But in my case, I don't know if anything would have helped, really, because there had been programs on TV about fraudulent people like this and I would sit him down and have him watch it and explain it to him, and even explain how people can take your identity from your credit card number, your birthdate, and all of this, and he still kept doing this. So I really don't know, but I think maybe in other people's cases, the more information that is out there, the better.

Senator COLLINS. I think you are right that in some cases, the only answer is for law enforcement to try to shut down these fraud rings altogether, but it is hard to do this given that they proliferate so easily. I think consumer education is an important part of the solution, as well.

Mr. Hathaway, would it have helped you if you had seen television ads or some kind of public service campaign to alert you that Canadian lottery tickets being sold in the United States were illegal, or some other information campaign? Would that have been of assistance in your case, do you think?

Mr. HATHAWAY. If I had known what I know today—I learned a lot from that experience—I would have been much more skeptical. But they snowed me and I respected the fact that they were attorneys, or they claimed to be attorneys. I can't say if they are or were.

Senator COLLINS. They almost certainly were not, I would guess.

Mr. HATHAWAY. I would think that if we could convince the Canadian Government that this scam business is going to boomerang on the country of Canada in many respects. The scam artists are making some money off of that and the people that aren't involved but have financial problems will be inclined to ignore the law, their laws, with respect to making money. I think the scam artists are going to encourage a lot of people that are in Canada to get involved for making easy money.

Senator COLLINS. So you would like to see a crackdown by Canadian law enforcement and more cooperation with law enforcement.

Mrs. Erb, is there something that could have been done to have made you more aware that this was a scam?

Mrs. ERB. I didn't know it was illegal, for one thing, and I think advertisements would help, that say to be careful of it, and put the ads in papers and magazines. I didn't know it. And another thing on their side, tell no one. They said, "You're going to have friends you never knew you had," and I didn't even tell my family. Only my husband knew about it, of course. My son only found out about it because he's a chiropractor and he adjusts me all the time. He kept saying, "Mom, what's wrong? There's something bothering you. You're all tense." And finally, I did tell him.

Senator COLLINS. So part of the scam was to try to make sure you did not tell anybody.

Mrs. ERB. And he said he wouldn't, and he did say something to his wife and she called Jennifer Granholm. I believe that's how I got in here.

Senator LEVIN. The Attorney General.

Senator COLLINS. Thank you very much. Thank you, Mr. Chairman.

Senator LEVIN [presiding]. Thank you, Senator Collins. The reference to Jennifer Granholm is to the Attorney General of Michigan.

Mrs. ERB. Right.

Senator LEVIN. So it was your daughter who called her?

Mrs. ERB. Daughter-in-law

Senator LEVIN. Daughter-in-law, and then she, in turn, as I understand it, put you in touch with Phonebusters.

Mrs. ERB. Right. I called and I know I talked to them, and I've had letters from another gentleman there and I sent him copies of my so-called bonds package here.

Senator LEVIN. And Phonebusters is an organization, a Canadian organization——

Mrs. ERB. A Canadian one.

Senator LEVIN [continuing]. Which fights fraud across the borders.

Mrs. ERB. Right. I'm willing to work with them.

Senator LEVIN. And they are well known in Canada and known to some extent here as a real great resource to fight fraud, and we will welcome them in a moment.

Are you still getting phone calls?

Mrs. ERB. No, but I'm getting lots of letters.

Senator LEVIN. The scam artists are still working on you?

Mrs. ERB. Oh, yes, France, Spain, Australia, dozens there, and I keep giving them to Laura.

Senator LEVIN. OK. Laura on my staff.

Mrs. ERB. Right.

Senator LEVIN. Are you getting any phone calls or mail these days from these scam artists, Mr. Hathaway?

Mr. HATHAWAY. I haven't been in the last year or two.

Senator LEVIN. Since you went to the Ohio Attorney General.

Mrs. Hersom, do you know if the phone calls have stopped?

Mrs. HERSOM. No, they haven't stopped. We still get numerous phone calls every day. But I've been doing a new thing. When they call and ask for my husband, I ask them to wait a minute, please, and I just put the phone down on the counter and leave it there. [Laughter.]

Mrs. HERSOM. Let them pay for the call.

Senator LEVIN. Let them pay the extra money. If a law enforcement organization gave you a tape recorder and asked you to punch a button the next time you got a call from one of these people, would you be willing to do that?

Mrs. HERSOM. I sure would.

Senator LEVIN. This is what Mr. Hathaway's daughter did in Ohio. Mrs. Erb, would you be willing to do that, if law enforcement gave you a tape recorder?

Mrs. ERB. I did get one call from, I believe it was Australia, too, and he congratulated me and said, "Mrs. Erb?" And I said yes. And he says, "You just won another bond of British Sterling silver, one of the bonds." And I said, "Oh, that's so nice," and I led him on a little bit. And then he said I was going to make so much money from it, and I said, "Gee, I've got 99 more. Would you like to help me make something of that?" Bang, the phone went down.

Senator LEVIN. I think the next panel can help us understand what law enforcement is doing, what the response is, where people should go when they get these calls in terms of seeking help to try to stamp this out.

Do any of you have the service on your phone where you get the phone number that is calling you, that you can tell what number is calling you on your telephone?

Mrs. HERSOM. Yes, but a lot of them are unknown name, unknown numbers.

Mrs. ERB. Yes. On the foreign——

Senator LEVIN. Numbers that are not known to you, but they are there. Do you have that service on your phone, Mr. Hathaway, do you know, the caller ID? Do you have that on your telephone?

Mr. HATHAWAY. Yes.

Senator LEVIN. You do. Mrs. Erb?

Mrs. ERB. I don't have it——

Mr. HATHAWAY. We changed phone numbers and that stopped a lot of them, because we'd had the phone for over 25 years.

Senator LEVIN. I see. You changed your phone number. That is why you are not getting phone calls. That explains it.

Mrs. Erb, you do not have the caller ID on your phone?

Mrs. ERB. No, I don't, but I know a friend of mine said that it wouldn't identify anyway because it's out of State or something like that and it's unknown.

Senator LEVIN. I do not know the answer to that question, whether caller ID works across the border or not, actually.

Mrs. ERB. I don't know.

Senator LEVIN. All right. Senator Collins, do you have any additional questions?

Senator COLLINS. No. Thank you.

Senator LEVIN. We thank you all again for coming forward, for not just your cooperation, but for your willingness, your interest in having your stories known, as painful as they are, so that others can be saved the kind of pain which you have suffered and hopefully put these crooks out of business as soon as we can, or at least put as much pressure on them as we possibly can from every direction that we can. Your contribution to that is very much appreciated. Thank you.

Senator LEVIN. We will now call our next panel. We have three witnesses, Barry Elliot, who is Staff Sergeant in the Ontario Provincial Police; Jackie DeGenova, who is the Chief of the Consumer Protection Section of the Ohio Attorney General's Office; and Lawrence Maxwell, Inspector in Charge, U.S. Postal Inspection Service. You can all just stay standing for a moment while we swear you in under our rules, as we are required to do.

Do you swear that the testimony that you will give before this Subcommittee today will be the truth, the whole truth, nothing but the truth, so help you, God?

Mr. ELLIOT. I do.

Ms. DEGENOVA. I do.

Mr. MAXWELL. I do.

Senator LEVIN. Thank you very much. We welcome you. You are experts in the area of cross-border fraud prosecution and we very much welcome your testimony. Let's start with Mr. Elliot, who is a Staff Sergeant with the Ontario Provincial Police. We welcome you to our country and thank you for coming forward. Detective Elliot.

TESTIMONY OF DETECTIVE STAFF SERGEANT BARRY F. ELLIOT,[1] ONTARIO PROVINCIAL POLICE, NORTH BAY, ONTARIO, CANADA

Mr. ELLIOT. Thank you, Senator. First of all, I am Detective Staff Sergeant Barry Elliot, OPP Anti-Rackets Section, creator and coordinator of Phonebusters and Seniorbusters, which is the national call center located in North Bay, Ontario, Canada.

I am disappointed that I am the only Canadian here for the next 2 days, and I know that there were others who would have liked to have come. I would like to thank the many agencies and individuals on both sides of the border for their support of Phonebusters, too many to mention. I would also like to personally thank Premier

[1] Mr. Elliot's Powerpoint presentation appears in the Appendix on page 77.

Mike Harris from the Ontario Government and his Minister David Tabuchi for their personal support of Phonebusters, which without, we would not exist.

I have supplied the Committee with a copy of the latest Powerpoint presentation, which shows some obvious trends. We have seen since 1995, an X pattern created on the number of Canadian victims of telemarketing fraud and the number of American victims of telemarketing fraud that are being hit by Canadian-operated fraud companies, and the X represents a huge drop since 1995 in the number of reported Canadian victims. At the same time, we see a huge increase in the number of reported American victims.

The large result of the reduction in Canadian victims is due mainly through education. Today, more than 80 percent of the calls that we get at Phonebusters are American victims. They are being targeted with the three major pitches—I mean, there is a number of them—the sweepstakes lottery pitch, which you have heard here today, loan scams, and a number of credit card pitches. They are targeting mainly the American elderly, as well as the American poor.

When we identified the trend or the beginning of a trend in 1995, we initiated the first-ever cross-border fraud meeting involving telemarketing fraud in Toronto. One of the members of that meeting is Jonathan Rusch from the U.S. Department of Justice, who I know is here today and will be testifying tomorrow, and I am sure he will corroborate some of the things that I'm going to say today.

We had a series of meetings trying to inform the Canadian Government of this very serious problem, or what we thought was growing to be a very serious problem. Due to the complete lack of action by the Canadian Federal Government to take this problem seriously over the series of meetings that we had to develop a national strategy, I know that President Clinton asked Prime Minister Chretien to do something about it around 1996 or 1997. As a result of that, there was a number of meetings again and a cross-border fraud report was presented to both heads of both countries.

A number of things happened as a result of this cross-border fraud report. Industry Canada Competition Bureau started to beef up its telemarketing task force in Ottawa. There was new legislation that was being developed under the Competition Act to try and make it easier to convict fraudulent telemarketers, something similar to the telephone rules that were created here. Project Colt in Montreal, where 99 percent of all Canadian victims are being hit from and also where, starting in 1995 big time Americans were targeted. So there was a task force created in Montreal to do something about it, and there was also a small task force created in Vancouver, and, of course, this was all as a result of the recommendations or part of the recommendations brought forward by the cross-border fraud report.

Three years later, and I'd like to repeat that, 3 years later, we now have a task force that's been created in February 2000 in Toronto and it was largely created by people who were interested in trying to do something about cross-border fraud and the members at the time were the Toronto Police, Industry Canada Competition Bureau, Ministry of Consumer Business Services, Ontario, and the

Federal Trade Commission. This year, the Ontario Provincial Police and the U.S. Postal have also joined. In March of this year, 4 years later, the RCMP and the OPP have finally signed an MOU agreeing that Phonebusters is the national call center for the country.

The three task forces are small, under-funded, and overtaken by the sheer mass of organized criminal telemarketing that is operating daily in these areas. On any given day in Canada, we have 300 to 500 criminal operations that are mainly targeting American victims.

I was just in Raleigh, North Carolina, at a conference sponsored by NAAG and the National White Collar Fraud Program and all I heard were complaints asking what is Canada doing about these companies that are attacking Americans? The problem is continuing to get worse all the time.

The Canadian Government has reviewed the 1997 report and gone over the recommendations that were provided and have given themselves "A"s on all the things that they have done. My personal thoughts on what the Federal Government of Canada has done can be compared to moving a truckload of sand from Toronto to Washington by using a coffee cup.

The reasons are clear for this epidemic of crime in Canada. We have collected approximately 126,000 complaints at Phonebusters from 123 countries, mainly from the United States. Accomplishments of the task force in Toronto, which has only been operating for about 18 months, include shutting down 36 boiler rooms, charging 61 individuals and arresting many more who were not charged. If you average that yearly, they are taking down about 18 rooms a year, where we have anywhere from 100 to 200 rooms operating daily. It is very minute.

Senator LEVIN. I am sorry, just to interrupt just for a second, I thought you said 300 to 500 before.

Mr. ELLIOT. That was for Canada. This is just Toronto. We have three hot spots, Montreal, Toronto, and Vancouver.

Senator LEVIN. Thank you.

Mr. ELLIOT. The reasons are clear as to what we should be doing about it and why the problem is so big. We have a lack of real Canadian Federal Government leadership and ownership of this problem. We have a lack of new Federal resources, which are desperately needed by the task forces who now have to use very expensive techniques, such as wiretap, to get these guys.

The Toronto task force, for example, is operating on a shoestring budget. They are doing a great job and they're working very hard, a small group of guys, about eight of them. These guys are working and taking down one room after a time, but there's hundreds of rooms around them.

When they take them down and successfully charge them and take them before the courts, we encounter an additional problem. We have extremely light sentencing within the Canadian courts, it does not deter the crime but only encourages the convicted to continue operating even while they're in jail, which is usually for a very short period of time, if they do in fact get jail time. It also encourages all the sales people who are working in these rooms to go out and create their own businesses and make more money because nothing is happening to their bosses.

Canada has a great deal of success in fighting fraud domestically because of education and awareness. We're very proud of that. We've destroyed the criminal market in Canada through education. I can assure you that the success was not because the criminals are afraid of spending any length of time in jail. Internationally, Canada is known and is proud to be a safe place to do business. Unfortunately, it has become a safe place for criminals to do business.

In conclusion, the Canadian Federal Government must stop sending two tablets of Tylenol to try and cure what appears to be an epidemic and take this cross-border crime seriously and commit the necessary resources to successfully combat it. Thank you.

Senator LEVIN. Thank you, Detective Elliot, very much for your very helpful testimony.

Senator LEVIN. Ms. DeGenova.

TESTIMONY OF JACKIE DeGENOVA,[1] CHIEF, CONSUMER PROTECTION SECTION, OHIO ATTORNEY GENERAL'S OFFICE, COLUMBUS, OHIO

Ms. DEGENOVA. Good morning, Chairman Levin and Senator Collins. My name is Jackie DeGenova and I am Chief of the Consumer Protection Section at the Ohio Attorney General's Office. Thank you for the opportunity to speak with you today on behalf of Ohio Attorney General Betty D. Montgomery regarding cross-border fraud.

I also would especially like to thank our victims who traveled here today. They made a tremendous effort and a commitment, and as you both pointed out, the courage to speak today about the frauds perpetrated against them really are a reminder of why we are all here today.

Their stories told this morning—Mr. Hathaway, Mrs. Hersom, and Mrs. Erb—are simply remarkable, but unfortunately, they are not unique to the tens of thousands of Americans victimized each year. We know that violent crime has been on the decline in recent years, but that international economic crimes are dramatically increasing. Like our panel of witnesses this morning, the majority of victims that we interview at the Ohio Attorney General's Office are not uneducated, reckless, or feeble-minded folks who carelessly throw away their hard-earned money. Their statements speak for themselves. Instead, the cross-border con artists are capitalizing on the globalization of communication, technological advances, and the limitations of law enforcement to combat the crimes without geographical constraints.

You have asked me to comment on the stumbling blocks in investigating and prosecuting these crimes. It will come as no surprise to you that the obstacles are many, including the fact that many States do not have the resources to prosecute the crimes. Ohio is one of the few States that has specific legislation requiring telemarketers to register with the Ohio Attorney General's Office, and it also requires certain conduct by the telemarketers when they are on the phone. But even so, our cases are often stymied.

Certainly, as well, there is a need for more resources and a stronger commitment by the Canadian Government to combat the

[1] The prepared statement of Ms. DeGenova appears in the Appendix on page 123.

telemarketing fraud. Understanding, however, that we can do little, if anything, to change the flow of resources for Canadian law enforcement, my comments today will focus on solutions we can implement within our own borders.

Five years ago, as has been mentioned, there was a need for such white-collar crimes to be recognized as the predatory and life-altering crimes we know them to be today. Awareness of the crimes by law enforcement and the public is at a higher level than ever, yet adequate training and funding for our law enforcement continues to be a problem.

We believe that improvements made in three key areas will also facilitate investigations and prosecutions of the criminals behind these cross-border crimes. First, the United States must follow through on its commitment to the Canadian authorities. Second, a reevaluation is necessary of the methods that we use to obtain information which is essential in a criminal case. And third, sufficient funds must be allocated for law enforcement to prosecute within our own borders and to assist in Canadian prosecutions. I will address each of these separately.

First, the United States must pledge and follow through on its membership commitments made to Canadian authorities on the various task forces and in its commitment to assist Canadian prosecutions. In recent years, there have been initiatives designed to specifically combat cross-border fraud between the United States and Canada, which Mr. Elliot had also mentioned. These are such projects as Project Colt, Project Emptor, the Toronto Strategic Partnership Against Telemarketing Fraud, which I will refer to as the Toronto Task Force.

Project Colt consists of six members of the Royal Canadian Mounted Police, or RCMP, a provincial attorney general, and a member each from the FBI, Customs, and U.S. Postal Service. Its goal is to reduce and prevent fraudulent telemarketing operations in Montreal by largely intercepting the money sent by the victims before it's received by the telemarketers. Unfortunately, there's not nearly enough investigators to combat the 400 boiler rooms that have been identified in Montreal alone.

Project Emptor is a similar operation in the Vancouver area of British Columbia. It has five members, Canadian authorities, and one FBI member. It has had positive results by concentrating on the theory that the forfeiture of the criminal's assets has the most significant deterrent effect on them.

The Toronto Task Force has United States designated members from the Federal Trade Commission and the Postal Service, and at the Ohio Attorney General's Office we have forged excellent relationships with members of the Toronto Task Force and hope this fall to become a named member of that task force.

While these initiatives have been excellent resources, the United States must be more diligent in its commitment of assistance by the various U.S. agencies. On Project Colt and Project Emptor, the presence of Federal agencies has been sporadic. Prosecutors from our office in Ohio have spent a great deal of time with the law enforcement authorities in Canada, Vancouver, Montreal, and Toronto. It's apparent that the Canadians have a very limited understanding of the complexity of our Federal and State laws and the

legal system and the seemingly incongruous laws of the different entities. Full-time membership by the United States designees on these projects could be an effective tool to sharpen our skills necessary to investigate and prosecute these types of crimes. In addition, they can help law enforcement on both sides better understand the intricacies of the laws on both sides.

In Ohio, our most successful cross-border cases have been those in which we have acted in a support capacity for the Canadian authorities. We have been available as a resource for legal questions. We assist in identifying and locating Ohio victims. We follow up with witness statements and even draft victim impact statements for trial. We have even funded travel and expenses for victims willing to travel to Canada for the prosecutions.

Our second recommendation is to reexamine the required Federal process for States to obtain information which is essential to criminal investigations and prosecution. In cross-border cases, States are completely dependent upon the Federal Government to assist in obtaining that information. The current system to obtain information from the Canadian authorities that may be used as evidence is through what is called an MLAT, or a Mutual Legal Assistance Treaty. These are available only through the U.S. Department of Justice, Office of International Affairs. An MLAT or other formal request, such as extradition, requires extensive paperwork—which, incidentally, will only be accepted in Word Perfect format—before beginning the process of review by two government branches before final approval. We have also encountered differing opinions as to when a MLAT is needed for evidence to be admissible in court.

Overall, the MLAT process takes a considerable amount of time and is quite intimidating. Meanwhile, the telemarketers are adapting their scams based on the availability of new technology. They are using prepaid digital phones, laptops, and personal digital assistants. We have seen the rapid increase of boiler rooms that are transient and fly-by-night operations. In the time it may take for us to obtain information for a search warrant or summons through MLAT, there is a substantial likelihood that today's telemarketing operations will have moved on to their next victim.

The relationship of the Ohio Attorney General's Office with the Canadian authorities has allowed us to obtain information on an informal basis without resorting to the MLAT process. The information can be used to develop cases but is of no evidentiary value to us in court because of the manner in which it was obtained. Thus, we still must obtain admissible evidence and prepare appropriate State charges against Canadian targets.

For these reasons, we suggest examination of workable, cooperative means to shorten the time for the MLAT process, or examining ways for States to obtain evidence that would be admissible in a court of law.

Finally, perhaps our best resource comes through funding. Suspects, witnesses, and victims are often separated by literally thousands of miles. Direct funding for States, for witnesses to travel to Canada for pretrial and trial matters, would go a long way in support of foreign enforcement efforts. Funding to aid in case prepara-

tion, such as perhaps purchasing video conferencing facilities to preserve the testimony of our elderly victims, would also be helpful.

In addition, some flexibility in the rules at DOJ's Bureau of Criminal Assistance would assist us and enable the National Association of Attorneys General to earmark grant funds for witness travel. I know that General Sorrell will be talking also about funding tomorrow, so I will defer to his comments for you tomorrow.

In sum, I believe that the three recommendations outlined, if implemented, will go a long way in assisting the United States and Canadian prosecutions.

Again, please consider the stories told by the victims, and for a moment, I urge you to step into the shoes of an Ohio Attorney General investigator or prosecutor. Every week, they have the unenviable task of sitting next to our victims, like Mr. Hathaway from Ohio, faced with his loss of money and what he has explained is his loss of dignity, and attempt to explain to him why we are unable to get back his money or that the prosecution of criminals is highly unlikely. Our task today is to find a better approach to fighting cross-border fraud, and I know it is a difficult one, but I submit to you it is not nearly as difficult or regrettable as facing our victims without any answers. Thank you very much for allowing me to testify.

Senator LEVIN. Thank you so much for your testimony.

Mr. Maxwell.

TESTIMONY OF LAWRENCE E. MAXWELL,[1] POSTAL INSPECTOR IN CHARGE, FRAUD, CHILD EXPLOITATION, AND ASSET FORFEITURE DIVISION, U.S. POSTAL INSPECTION SERVICE, WASHINGTON, DC

Mr. MAXWELL. Thank you, Senator Levin and Senator Collins. I really appreciate being here today. The last time I was here, you may not remember me, as I was behind a very broad-shouldered chief inspector during the deceptive mails hearing, so I am here today up front and it's a great pleasure.

I'd like to draw your attention here to something that I think gets right to the heart of why we are here. One of our local offices in Pittsburgh, the Allegheny region, worked with the Senior Action Coalition and also a private advertising agency, Boswell and Kamastra Creative Communications, and they did this pro bono. They did this on their own as a public service. If you read the caption here, and I think it's very compelling, "He lived through two World Wars and fought in one. He helped raise six children and three dogs. He saved a long time for his retirement. Don't let one phone call take it all away."[2]

This message and the information in this booklet, I think was done extremely well and it emphasizes what I'd like to say to you today, and again, I say this as somewhat contradictory. I come from a long line of law enforcement. Like Senator Collins, I have roots in Canada. My great-grandfather was a Royal Canadian Mountie. My father was a New York State Trooper. Yet, I think the enforcement part of law enforcement, the arrest, the conviction, is

[1] The prepared statement of Mr. Maxwell appears in the Appendix on page 129.
[2] Exhibit No. 10 appears in the Appendix on page 283.

very important. However, in the area of fraud, awareness and education are critical. If we can get the word out, I think it will do a lot more than some of these other issues that we have faced.

One of the things we announced at your hearing on deceptive mailings, the chief announced for the first time an ambitious consumer protection event called "Know Fraud," [1] and probably at the time, and I still think, is the most ambitious attempt ever attempted by a conglomeration of agencies. We had a number of partners, including the FTC, Department of Justice, FBI, NAAG, there was a number of them. This card, you may see is familiar. It went to every home in the United States. That's 120 million addresses. It was expensive. It was ambitious. It was multi-media. We had a Website. We had a toll-free number. We still get letters today, and this went out in the fall of 1999, and we are planning a second one.

My point is that the funding for this, because funding was mentioned, and again, as I'm going through my remarks here, I certainly don't want to repeat too much for the group, the funding came from a very innovative thinking prosecutor in Iowa U.S. Attorney's Office. We had an advance fee scheme. We seized about $4 million and we could not identify most of the victims, or they would get a small amount of what they lost.

So the U.S. Attorney asked us if we could put it in a special fund, if we could forfeit it, put it in a special fund, and use it for fraud prevention initiatives, and we said absolutely. So we got the approvals up the line. We established the fund. We still have monies today in that fund. We used that to fund the printing and the design of the card and some of the other aspects of it. I think it's an effective use and just shows that there's a lot of things that we can do if you get creative, and also if you do them together.

The Deceptive Mail Prevention Enforcement Act had an excellent effect for us. Besides giving us powers like administrative subpoenas, it spreads the word. In showcasing things like we're doing here, it emphasizes the problem and it educates people that there is a problem. We've seen a decline by 26 percent in our complaints in deceptive mails right now. We're not exactly where we want to be, but a lot of that is because the legitimate portions of the industry knew this was coming. They policed themselves. They worked with us. They worked with your staffs, and I think that helped tremendously. Probably an unanticipated result of this, it opened up possibly some areas for the cross-border fraud, as well, because, again, some of ours closed down.

Interesting, too, if you look at a correlation with the history of the Inspection Service and the evolution of fraud, and I'll just cover this briefly, we've been around since the ark. As you know, we started out with the Postmaster General, Mr. Franklin, and we worked our way through 200 years or more of the Postal Service. In 1872, in response to the advances made in communications through the mail on train routes, promoters, operators, fraudulent operators capitalized on the absence of Federal law and they would jump from State to State to reach—with different types of schemes, land frauds, medical quackery, whatever.

[1] Exhibit No. 9 appears in the Appendix on page 281.

As we clamped down, in 1872, Congress enacted the Mail Fraud Statute. It is the grand-daddy. It is the oldest consumer protection law. In my mind, it's the best. I think many prosecutors will still tell you that. It's been tampered with very little through the years. In 1994, Congress modified it to include private couriers, and that helps us here because we're addressing a lot of private overnight shipments. So the Mail Fraud Statute has held up well. We have several other weapons, as you may remember from our hearings, in the deceptive mails area, most notably the false representation statutes, and we can utilize those.

However, as we talked about, in this climate, where we saw in our history how the perpetrators would jump from State to State in the absence of law, as we clamped down on boiler rooms, which we did in the 1980's and 1990's in this country, now they're moving up into Canada. So we are seeing a proliferation of them.

This next chart I have here of our statistics we ran through our mail fraud complaint system.[1] And initially, if you see, in 1996 through 1999, it stayed fairly steady, and then all of a sudden the big jump in 2000, and, of course, the question is, what happened here? A 105 percent increase. These are complaints against Canadian operations by U.S. citizens, and my response to that would be two or three things happening.

In 1997, of course, we started focusing on the problem of cross-border fraud. In 1999, we had "Know Fraud." We also had the Deceptive Mailings Enforcement and Prevention Act, or Prevention Enforcement Act. I think those things, the "Know Fraud" campaign and some other initiatives, brought to light some of this. People know where to go, to some extent.

One thing we learned in the "Know Fraud" campaign, which I think is very relevant to what you're focusing on, is that we did about 40 focus groups of mixed ages. Oftentimes we talk here about senior citizens, and it is very true they are disproportionately represented here. I mean, they're retired, they're home, they're available to answer phone calls, and they're worried about their financial futures. But there is a random selection. There are others that aren't senior citizens that are also victimized.

But in one case we had in Vancouver, in which there were thousands of victims, we forfeited over $12 million that we returned to victims. The average age was 74, so that will tell you where these people focus. They're predatory, they're opportunistic, and they're relentless.

Personally speaking, I've had a member of my family targeted and I can tell you, there are remedies you can do and we're advocated those in prevention campaigns. But the younger people that know this, it's even better because they can relay this to the older people in their family.

On this chart here, we show the top types of complaints, and it's similar to what Mr. Elliot and the others will probably share with you—advance fee loans, failure to provide, and foreign lotteries.

If we look at the theaters of operation in this, we talked about there's three areas, Montreal, Toronto, and Vancouver. Mr. Elliot mentioned those three areas earlier. We have a member in Mon-

[1] The chart attached to Maxwell's statement appears in the Appendix on page 149.

treal. The focus on that is on the advanced—on the telemarketing promotions, and it's mostly organized in nature. We have a lot of criminal focus on that with the Royal Canadian Mounties. In Toronto, they're focusing on advance fee schemes. And in Vancouver, what appears to be predominant is lottery schemes.

My concern is this. We've focused in the Inspection Service primarily in the Montreal area and Toronto, a little lesser extent in Vancouver. I haven't seen numbers of instances of lottery mail coming across the border from Canada in Vancouver. I suspect there is a lot, and what I suspect is they're coming across the border and mailing it in the United States. So I think that's an area where we in the Inspection Service certainly can be of value.

There's a couple of other areas I indicated in my testimony, my written testimony, where we can focus. One would be in the area of what I call alternative remedies. The Postal Service has a unique position in the Universal Postal Union. There is a group called the Postal Security Action Group. The chief inspector a few years ago used that chair, if you will, to force through an understanding of a problem that the world was experiencing with what we call the "419 fraud letter." Many of you may have received that letter at home. Essentially, it's a solicitation for money from Nigeria. You give some money, we have some money for you. It predominantly comes from Nigeria, and other West African nations.

What we did, as a union, we looked at the postage, we looked at the means of mailing, and it was determined that they were using counterfeit postage and we were able to set up memorandums of understanding with these countries, seize the mails, and destroy them, and today, we've destroyed about five million pieces, and that was done without any type of legal intervention. It was done through the Universal Postal Union.

Right now, the Postal Inspection Service has been meeting very closely with the Canada Post, our counterpart in Canada. We're looking at ways we can possibly complement one another's civil remedies. So possibly when we get a representation order here in the United States, they'll be able to use their prohibitory order in Canada. We have a draft memorandum of understanding (MOU) we are working on in that regard.

I could go on about a number of other initiatives, but I think the point is that there is definitely alternatives we need to be focusing on. There are other alternatives in terms of some of the funding issues, too, such as the fund I mentioned earlier.

I would like to summarize by highlighting some of the recommendations I made in the written report that I furnished the Subcommittee. First and foremost, Barry Elliot mentioned Jonathan Rusch. I think the Department of Justice deserves a great deal of credit for their spearheading of the United States representation on that. Mr. Rusch has kept us focused on the importance of the cross-border initiatives so we know exactly where we've going with it. I cannot commend his leadership of the U.S. representative team to the cross-border telemarketing Task Force.

I would encourage the existing cross-border forum. What we have going on now is very unique. It foreshadows what possibly we will see in the future as online solicitations grow. We're starting to see more complaints from Europe and other countries. So what we do

here with Canada, what we can do with, as you said so eloquently in your opening remarks, if we can prepare initiatives and strategies with the Canadians, together, we can possibly use them in the future as we face other problems elsewhere.

The funding solution for the witness and the video conferencing, what I proposed to the staffers was that possibly the Subcommittee could consider recommending monies that are taken in fines. Perhaps we could even double the fines for cross-border fraud. But monies taken in fines, also monies, proceeds from forfeiture that we can't return to victims, we could put in a fund and use that for the video conferencing and for the witness travel whenever possible. I think that would be very beneficial. You would hate to see, although I don't know of any yet, you would hate to see a case not go forward because of a situation caused by the lack of funding. I mean, that would seem unreasonable.

We talked about the MLATs. That was mentioned earlier, too. Again, most agents tell me that the streamlining of that process would be very helpful and I would encourage that.

Enhancing oral communications between the cross-border council and the agents, making it less formal should be encouraged. That's been a little bit formal, from what I understand, in some instances. But the local contacts have been excellent and these task forces, that's certainly a great first step. The way we're working there, I think is excellent.

What I suggest, also, are joint training initiatives between Canadians and American law enforcement and consumer groups. If we brought ourselves together, that was mentioned earlier, about how we do not sometimes understand the complexities of our different laws in our sovereign nations, the mixing of the agents, the training, the strategizing, I think would be of great benefit. It would also establish great relationships.

And then finally, I would say in the area that troubled a lot of us is how do you stop this plague on the phone, the constant repetitive calls and so forth, particularly when law enforcement is slow to get some action into place. Most agents say the obvious. If we could shut off the phone service, we'd be way ahead of the game. In the United States, we can move under an 18 U.S.C. 1345, which is an injunction against fraud, and we can shut down that phone service to a known boiler room. Obviously, that wouldn't apply in Canada.

What the Department of Justice was pursuing, and perhaps Jonathan Rusch could expand on this tomorrow, is in last year's crime bill, there was a provision, which was not passed, which did address that issue. I understand they did some research with the telephone companies and it is possible, that they can shut off known telephone numbers coming into the States. That would be of great immediate relief.

So apart from that, again, I do applaud the Subcommittee's efforts in this area. Again, I think it is visionary in addressing a problem that's coming down the pike. I offer whatever assistance we can provide, and thank you very much.

Senator LEVIN. Thank you very much, Mr. Maxwell.

Just a question not directly related to this morning's subject, but you said that there's 26 percent fewer complaints of deceptive mail relative to sweepstakes.

Mr. MAXWELL. That's correct.

Senator LEVIN. Do you have a figure for how much less sweepstakes mail there is altogether?

Mr. MAXWELL. I can give you that. I don't have it with me.

Senator LEVIN. Has there been a reduction since our hearings, do you know?

Mr. MAXWELL. Yes. In fact, during the hearings, we saw some reduction, and then probably within 2 months after the hearings, some of the postal delivery folks came to us and said, "What happened here?" So it was a definite reduction, yes.

Senator LEVIN. It is good to hear the reduction in the number of complaints, that these hearings did have an effect. That is always good to hear, and that is really what the purpose of these hearings are. I think that Senator Collins has expressed it well, that one of the purposes here is to help to educate our public as to what these scam artists do to us and to our most vulnerable people, how they take advantage of people who are trustful. So these hearings serve a purpose in many ways, hopefully, but that surely is one of the ways.

Just a couple quick questions before I have to leave. First of all, relative to Ohio, you said that the telemarketers, Ms. DeGenova, how many of the telemarketers do you think actually register of the ones who are required to register? Do you have any idea what percentage of them do, in fact, comply with your law?

Ms. DEGENOVA. I think the most unscrupulous telemarketers are not going to register, even if it is a requirement. They're obviously breaking the law to begin with. I think you make a good point that that registration would be difficult. We have—I think it's preventative. Our law is preventative, also, in the fact that it sends the word out there to unscrupulous or legitimate telemarketers that you're going to have to register in Ohio, and we've gotten several of our convictions on that failure to register part.

Senator LEVIN. Now, Canada has the Phonebusters central number. Do we have anything like that in the United States, where everybody can call one number, so we don't have six different law enforcement agencies and people aren't sure whom to call? Do we have anything similar to Phonebusters?

Mr. ELLIOT. The Federal Trade Commission has Consumer Sentinel with an 800 number, it is built on the concept of Phonebusters and they've done a great job.

Senator LEVIN. All right. I guess we'll find out how that works later on. Do we know whether, from your perspectives, whether or not that is working well, that 800 number that FTC has?

Mr. MAXWELL. Yes. I could say, Senator, that with "Know Fraud," we used the Consumer Sentinel for the collection of complaints and we explored possibly merging with the, to some extent, with our fraud complaint. We get about 60,000 to 100,000 mail fraud complaints a year. We have signed a memorandum of understanding with FTC to partner with them in the future, and about a year ago, I received a letter—our office received, the Chief Inspector, a letter from Senator Durbin addressing that same fact, that

consumers don't know where to go. It's very confusing. We need one-stop shopping in this country where the agencies can go and be advised.

Senator LEVIN. You say we do need one?

Mr. MAXWELL. We definitely need—if we can build on FTC's concept and what they're doing, I think it's a great place to begin.

Senator LEVIN. All right. Well, that can be explored, also, further tomorrow.

When a person is caught in Canada, when you get one of these shops, is that what you call them——

Mr. ELLIOT. Boiler rooms.

Senator LEVIN [continuing]. Boiler rooms—when you get one of these boiler rooms and you actually arrest people, what is the penalty, typically?

Mr. ELLIOT. Well, depending whether they've got a previous record or not——

Senator LEVIN. Assume none.

Mr. ELLIOT. Assume not, the chances of going to jail are next to nil.

Senator LEVIN. What about fines?

Mr. ELLIOT. Fines, we've had some recovery of restitution, a small amount. Toronto has recovered about $500,000 over the last 18 months, which is really peanuts.

Senator LEVIN. What is the maximum fine, and what is the typical fine?

Mr. ELLIOT. Well, one of the guys in Montreal got fined $1 million for restitution, but the problem is, it looks good, but they didn't collect one dime. So fines and recovery, it's not really a—it doesn't really work.

Senator LEVIN. It does not work well. It is not much of a deterrent.

Mr. ELLIOT. No. The only thing you can do is when you're arranging the plea, I've found in the past is you have the restitution made while the plea's being made so that the payment can be made to the court upon sentencing.

Senator LEVIN. Ohio used the phone to capture some of that telephone conversation we played before. How often do we use, and do you use in Canada, recordings? In other words, when you get complaints, do we often tell the victim or their family, hey, here is a tape recorder. We will attach it to your phone if you are willing. All you have to do, if you are receiving a lot of these phone calls, is to just punch this button when you get one.

Let me first ask Detective Elliot about Canada. Do you use that a lot? Is it helpful?

Mr. ELLIOT. In my early years, I actually prosecuted cases, successfully prosecuted them. We used tape recordings as evidence and we did not have a problem introducing them in court. The problem was finding an informant from the room that could identify the voice on the tape. And once we did that, we were able to get it in as evidence and it was very useful because it really showed what the pitch was all about, the lies and deception. So yes, it is true that we can do that.

The problem we have now with the telemarketers is they're not stupid. I mean, they look at every case that we do, they sit down

with their lawyers and they analyze how they can beat the system. And what they do now is they make sure that the individual telemarketers can't hear each other's pitch. In some cases, the telemarketers don't even know the real name of the criminal next to them. They are attempting to evade how they can be caught and prosecuted in court.

Senator LEVIN. Any other comments about taping telephone conversations?

Ms. DEGENOVA. I think it is very useful. Also, it's educational if you can play those things for the public, as we have done here today.

I did just want to take a quick moment and mention the freezing of assets. We can do that through the FTC in the United States, but I think those mechanisms are more difficult when the assets are in Canada.

Senator LEVIN. What is the penalty in the United States, by the way, for this kind of fraud?

Ms. DEGENOVA. I think it would vary whether you're in the State or Federal system.

Senator LEVIN. What about the Federal penalty?

Mr. MAXWELL. The Federal system, you could get sentenced for up to 5 years for each count or more, and fines and penalties. But normally, they'll serve a couple of months for a telemarketing violation. One of the serious crimes I mentioned earlier in Vancouver, that gentleman received several months and he was able to serve the time in Canada as part of his plea agreement.

Senator LEVIN. I did have one additional question. As to getting witnesses to Canada, is there a problem? Are people willing to go there to help prosecute cases? Are there any problems with travel expenses?

Mr. ELLIOT. Well, yes. One of the problems has been with these jurisdictional issues. Who's going to prosecute, especially when you've got witnesses from other countries, and, of course, an additional problem is the cost involved with these witnesses coming in.

The agreement we have in Toronto, for example, we have a great relationship with the Federal Trade Commission. They provide us with a letter of intent that we may produce to the defense counsel stating that if you're going to go ahead to trial, we're prepared to fly these witnesses in at their cost, and that's worked out very well. So far, they haven't challenged that.

Regarding video conferencing, there was just a recent case in Winnipeg where they used video conferencing with U.S. victims. The problem with video conferencing is that it's very expensive. It would have been cheaper to fly the victims in than actually do the video conferencing.

Senator LEVIN. Is the conference for the purposes of discovery? You can't use it at trial, can you?

Mr. ELLIOT. We don't have the same kind of setup. Yes, we did. We used it for trial.

Senator LEVIN. You mean the tape of a testimony——

Mr. ELLIOT. Yes.

Senator LEVIN [continuing]. Or the actual testimony at trial?

Mr. ELLIOT. No, it was the actual, live video feed, and that was one of the things that came out of the 1997 report, was to try to

come up with ways to make it easier to prosecute as far as the witnesses are concerned. But I would suggest that it's extremely expensive. The defense counsel doesn't like it. But, as things drop, costs drop in the future, it may be the way to go.

Senator LEVIN. Thank you. Senator Collins.

Senator COLLINS [presiding]. Thank you, Mr. Chairman.

Mr. Elliot, first, I want to commend——

Senator LEVIN. I'm sorry. Forgive the interruption. We have some letters that Mrs. Erb got that we'd like to turn over to you, Canadian scam letters that you could look into and investigate for us——

Mr. MAXWELL. We'd be happy to take them.

Senator LEVIN [continuing]. And also, we have the testimony of the Attorney General of Michigan,[1] Jennifer M. Granholm, that we'll make part of the record. Thank you.

Senator COLLINS. Mr. Elliot, I first want to thank you very much for all the assistance that you've given the Subcommittee in this investigation and also to commend you on the Phonebusters project. I think it's an excellent one and has been extremely useful.

One of the most important points that you made in your statement, or one of the ones that struck me was the fact that the incidence of Canadian victims has gone sharply down and the incidence of American victims has gone sharply up. Do you attribute that to the education efforts that the Canadian Government has undertaken, or could you talk a little bit more about why you see those trends.

Mr. ELLIOT. Well, there's a few things that have caused the trend. No. 1 is education. We killed the criminal market through education. I mean, we really educate the heck out of Canadians. We drove home some simple facts, for example if you win a prize, it doesn't cost you ten cents to get it. We made people aware of the fact that if you get a phone call, which we don't get very often that you've won $100,000 or $1 million, that there's no cost associated in an honest contest, you don't have to buy any product. And we drove that home over and over again. We've done a lot of media interviews.

And creating that call center with the toll-free number has been very successful, as well as the Seniorbusters program, where we call back to victims. These are a bunch of volunteers that offer peer support, and also kill the fresh victim market.

Now, the other big reason that criminals are targeting Americans is your dollar is worth twice as much money. You've got ten times the market. And it causes—they know about the jurisdictional issues. They know all the problems that we have. They've got more information about us than we have about them. I mean, these guys are—this is organized crime. You know, it's associated to other traditional organized crime. It's an organized crime itself.

Consumer fraud, people are just beginning to realize how big consumer fraud is. When you think that consumers drive the markets of all of our markets around the world, if you're a criminal and you tap into that, just think how much money you can make. And

[1] The prepared statement of Jennifer M. Granholm, Attorney General of Michigan appears in the Appendix on page 297.

everybody looks at these credit card pitches, like $100 or $200 for a card that you don't get or a low-interest-rate card, it doesn't look like a very serious problem. But you get a million people to send you $200, you've just made a lot of money. And you think a million people is a lot. You've got 200 million people here in the U.S. market that can be attacked either by phone or by mail or by Internet.

So there's a number of reasons, jurisdictional, light sentencing, the risk that if they're going to get caught, it's pretty slim, and the risk that if they do get caught, that they're not going to jail are all contributing factors.

Senator COLLINS. Thank you. Ms. DeGenova, is that right?

Tell me a little more about what happened in Mr. Hathaway's case. You obviously did a lot of investigative work. You taped the phone calls that he was receiving. And yet when I asked him today whether he had received any restitution, the answer was no. Tell us what happened and why there was no restitution in this case.

Ms. DEGENOVA. I think it comes down to resources. I think we did have a trap and trace line. We were able to locate the boiler room. We had it on tape, the actual scam. All of those things are really unusual and do take a lot of legwork and it's really a tribute to the hard work that our investigators have done in this case.

I think we worked through Project Colt in that case and they were just not able to free up the resources to go after that particular boiler room, and I think what the others have said about even if you can locate those folks, the restitution itself, there's no assets or they're hidden or they're frozen or we can't get to them and the laws are complex. So those are some of the other difficulties.

Senator COLLINS. Is there also a problem—and I would ask all three of you this question—with the individual case being of a relatively small dollar value, compared with the costs of prosecution, particularly when you are dealing with multiple jurisdictions? It seems to me there is a little bit of a catch-22 here, because it seems that they are too expensive to prosecute the small dollars, and yet if you added them all together, as Mr. Elliot has suggested, you are talking about an enormous amount of money. But is the amount of the individual fraud a deterrent to enforcement and prosecution?

Ms. DEGENOVA. It can be. I think that we need the education, again, for folks, no matter if it is $29 or $2,900 or whatever the case may be. I also believe that, depending on the different civil and criminal laws in each individual State, if you're prosecuting here, you need to aggregate that amount. Those things can be done, but I think even as law enforcement, we view some of those cases, and even the general public has the sense that, well, $29 here or $59 per person. But as Mr. Elliot pointed out very aptly, it adds up to quite a lot of money.

Senator COLLINS. And a lot of times, when there is investigation, and perhaps if we could put the first exhibit up as an example,[1] once an individual case is investigated, it turns out that there are literally hundreds or thousands of other victims and that would be an example in this one scam that I mentioned in my opening statement, where a woman from North Carolina lost $100,000, which is

[1] Exhibit No. 1 appears in the Appendix on page 237.

a great deal of money. But when this case was investigated and ultimately successfully prosecuted, it turned out that there were thousands of victims in 18 States. So oftentimes, if these cases that appear to involve only small dollar amounts were investigated, it would turn out to be a significant fraud ring involved.

Mr. Maxwell.

Mr. MAXWELL. If I may, Senator, I think that speaks to why it's so important to have a centralized complaint collection similar to Phonebusters and FTC. If the agencies know, they might not be so quick to walk away from that, because with all the priorities, with all the cases coming at groups like Project Colt or groups we have set up in the States, they're going to prioritize by what looks like the worst, the most egregious. So, like you say, we could be missing a lot, and if we have a centralized collection somewhere where we can check complaints quickly and move swiftly, I think that would be of great benefit.

Senator COLLINS. Mr. Elliot, based on your experience, even when there appear to be small dollar cases, if you add up the number of victims, is it usually a considerable amount of money?

Mr. ELLIOT. Yes, and we have the adequate law in Canada, it's called Defraud the Public, when we can show three or more victims have lost something on a similar scheme, it's no longer a $100 scam, it adds up to whatever the number of—the amount of the loss is, and that's what you're convicted on. So it's not necessary for us to change the law to adapt to this type of crime. What is necessary for us to do is to actually prosecute and enforce it and get the necessary—a reasonable sentence.

But just to add a little bit to that, it's certainly our experience, the smaller the amount of money, the less chance the victim's going to report it. In some cases when they're targeting the elderly, on the credit card protection, for example, in some of these sophisticated scams, the elderly don't even know that they've been scammed and they're having amounts taken out of their credit card, not realizing that the credit card protection doesn't exist. The higher the loss, the greater chance that the person's going to report it, but you still have a huge amount of people that have lost a lot of money who are not telling anybody about it. They're not telling their family. They're too embarrassed.

So, when you talk about education and you talk about having one number, it's not just to educate the public about what's going on so they can better protect themselves. You've also got to educate the public to come forward, that it's a good thing to let everybody know what's happened because you can help fight the fraud, just like these three victims did today.

Senator COLLINS. One of the striking aspects of the testimony of every single victim that we interviewed, and including the three that we heard from today, was that once they were taken in by a solicitation, whether on the phone or in the mail, they were inundated with other telemarketing calls and other solicitations from the mail. This suggests to us that these fraud rings are sharing information and that there are victim lists, or as one con artist described it, sucker lists. Could you all comment on what you have seen, based on your investigation? Is that the case? We will start with you, Mr. Elliot.

Mr. ELLIOT. You have got a huge industry, not only in telemarketing fraud, but you've got a huge industry in creating these fake sweepstakes mail-outs and these fake lotteries that are worldwide. In a lot of cases, you have companies, criminal companies, that's their only thing, is to create these sucker lists to sell the information to the fraudulent rooms, the telemarketing rooms, so that they can call these victims.

So in Canada, I know Industry Canada, under the Competition Bureau, are doing a complete analysis of these fake mail-outs coming out of Canada that are hitting countries around the world, and they are pinpointing certain individuals that are responsible for all of this. We have now found out that they are collaborating with other criminals in other countries, because what used to be just a North American problem is now spreading worldwide.

We just had a delegation that came in from the Philippines which I just found out, that the major language in the Philippines is English. We've got rooms that are opening up and they're starting to use the same tactics that they used 5 years ago in the Philippines. We also have telemarketing rooms that are contacting the Philippines and using the same marketing concepts to create the sucker lists.

Senator COLLINS. Ms. DeGenova, in your experience, do you see sharing of sucker lists?

Ms. DEGENOVA. We do. I would concur with Mr. Elliot's statements. It's an industry all to itself, hundreds of thousands of dollars to buy what could be called a mooch list or a sucker list. We've confiscated them in search warrants and things like that and have done what's called a reverse boiler room, where we'll call the folks on that list and say, you're on this list and we're calling from the Ohio Attorney General's Office. That's another good way to educate.

But I agree, and I think the problem will only proliferate with public information and Internet and other ways to share that information. I think folks really need to be cognizant about who they give their personal information to.

Mr. ELLIOT. Senator, may I——

Senator COLLINS. Yes.

Mr. ELLIOT. There's also a problem with the sale of honest information, and just to give you an example of that, the credit bureaus, for example. On the credit card pitch where they're using—we can get you a credit card for $300 or $400—they're buying freshly turned-down lists from the credit bureaus. So these people are really hot to get a credit card and they'll do just about anything to get a credit card and that information is being supplied by an honest company.

Senator COLLINS. That is a very good point, and one issue we have not discussed today, but is another area of cross-border fraud are these advance-fee-for-loan schemes, and that kind of information would be very useful for that.

I participated in a reverse boiler room operation with the AARP in Maine and with our Attorney General's Office and we did do exactly what you said. We had access to a likely victim list and called and alerted the seniors on it that they are being targeted by telemarketing scam artists.

Mr. Maxwell, I was very pleased to hear your comments about the law that Senator Levin and I authored to crack down on deceptive mailings. Do you think, ironically, that because of that law, the fraud is moving more toward telephone fraud or cross-border fraud which would not be covered as easily?

Mr. MAXWELL. I think what we are seeing, it's still a combination. As you were talking about the sharing of lists, we have one operator that we refer to as one-stop shopping—the one out in Vancouver I mentioned earlier. He would use saturation mailings in locations, get the information back where people would actually put their personal information and their phone number. Then he would conduct his telemarketing operation from that. There are some companies that just do mailings and then provide those phone numbers to the telemarketers.

So I don't know if there's a growth spurt in the absence of the other. I think both remain. But in the cross-border instance and what I alluded to earlier was, I think, when we're slowing down our U.S. operations, at times we open up some opportunities for others . . . in Canada, so they see more fertile ground right now because there's less competition. It's like a business. It might be illegal, it might be corrupted, but it is a business and they're competing against one another and it's very organized.

Senator COLLINS. Finally, Mr. Maxwell, let me ask you to explain to us the role of commercial mail receiving agencies and how they may relate to con artists seeking to defraud consumers.

Mr. MAXWELL. That was an area that's—the commercial mail receiving agency itself, it's similar to a post office box, for those who are unfamiliar with it. It's like Mailboxes Etc. or any one of the legitimate concerns, where you can rent a box and receive mail. The Postal Service has a requirement that you fill out an application so that we'll know who we're delivering the mail to. Your identity is required.

Over the years, registration wasn't enforced that heavily and a lot of commercial mail receiving agencies cropped up without identification and so forth. So as we began to tighten that up, we saw the need to greater tighten it because these addresses were being used to conduct frauds. Obviously, using CMRA addresses can work particularly well in cross-border frauds, but it works from State to State, as well. Somebody could take out a box at a CMRA and it could say, Suite 76, Rodeo Drive, California. That would imply to the person sending money that, hey, this is quite an operation, it's in an exclusive part of town, and so forth. It's not——

Senator COLLINS. When, in fact, it's just a private mailbox, a mail drop, essentially.

Mr. MAXWELL. Correct. And this came to light primarily as a result of some of our work in the credit card area, but also in the mail fraud area, and we enhanced the regulations most recently and it was controversial because, again, you're dealing with—that was one of the draws, to have this open-ended kind of address. It looks very flattering, to make it sound however you want.

What we asked was that they use the designation PMB for private mailbox, and again, there was some push-back on that. We debated with the industry and a compromise was reached. So as of August 2001, they will be required, "they" being anyone using a

commercial mail receiving agency, to use the designation PMB, similar to post office box, but private mailbox, or the number or pound sign (#) that can also be a designation, which the post office will recognize, the Postal Service will also provide a toll-free number in which consumers can call to get verification of CMRA addresses.

Having said that, the weakness in it is that not every CMRA is registered, and we have, I think, a list right now of 13,500. I suspect there are considerably more, and from what I've seen just in the New York area, there's many of them. So with enforcement of this and the more information we can get, it would be a lot better.

And again, I'll qualify by saying that there are many legitimate companies using CMRAs. CMRA operators and the industry are now working with us very closely. We're actually participating in the training of their new franchise owners. We've had cooperation with CMRA operators in Canada. We've called them and said, you don't have to, but can you give us some information, and they've been very helpful. So, again, that's an area we'd like to explore with Canada Post, as well, what we could do up there.

Senator COLLINS. And finally, Mr. Maxwell, I am very impressed with this brochure. I think it is excellent, and we have heard from Detective Elliot what a difference public education efforts have made in making Canadian consumers far less likely to fall prey to these kinds of schemes.

Could you tell me a little bit more about how this was funded? Was it a grant from the Postal Service Inspection Service, or——

Mr. MAXWELL. Actually, my understanding for this promotion, and again, this is an example of a local initiative, where you have the Senior Action Coalition in Pittsburgh, you have this advertising group and also the Postal Inspection Service, and they did this for free. I mean, they prepared this pamphlet and published it and the seniors, and working with the postal inspectors, came up with the language and some of the materials, and it comes in a thicker brochure almost this size, where you open it up and you have additional information. We have some of our pamphlets in there on telemarketing fraud and some other schemes. It's a nice package. I've been impressed with that more than most I've seen.

Senator COLLINS. I've often thought that if we could somehow distribute a pamphlet like this to every senior citizen, maybe as an enclosure with the Social Security check—except that most people use direct deposit now, so I do not know how you would do it exactly—we could save people a lot of grief and a lot of financial loss.

Mr. MAXWELL. I had a chart earlier, but I didn't think time would permit, showing the States that we have shown to be the most frequently seen in our complaint database for cross-border—well, that's it there.[1] The thought we had when we saw this and in talking with some of your staff members was that perhaps that compelling picture of the senior with that language, if it was put in places where the overnight payments are mailed, might at the last minute trigger the victims and stop them in their tracks, so to speak, to question, am I doing the right thing? We are exploring

[1] The chart referred to appears in the Appendix on page 151.

that. We're looking at maybe some States where we could use that as a prevention campaign. Sometimes it's very effective.

Senator COLLINS. Thank you. Mr. Elliot.

Mr. ELLIOT. Just to add to your education, once we drive the telemarketers out of Canada, and assuming that we do, they're not going to disappear. They're just going to move to the Caribbean and other places. So you have to really concentrate a lot on education. There is nothing wrong with putting a telemarketer in jail, but education is the way to go.

Senator COLLINS. Thank you. I want to thank all of you today for being with us. Your testimony was very helpful as we grapple with this increasing problem, so thank you very much for your efforts and your contributions, which are much appreciated.

I want to thank all of our witnesses here today. We have heard from three victims of cross-border fraud, innocent citizens who were targeted or whose loved ones were targeted by unscrupulous telemarketers or sweepstakes operators who were operating out of what they may have assumed was a safe haven on the other side of the border. Each of these witnesses has had a special story to tell, but the underlying theme of them is the same in each case, and that is that they trusted the words of a smooth-talking stranger who contacted them at a vulnerable point in their lives and preyed upon, took advantage of their honesty, their trust, their hope, and their good will in order to swindle them of thousands of dollars, and these cases help put a human face on the problem of cross-border fraud.

Our elderly citizens deserve to be free from this type of exploitation and to feel safe in their own homes, and our first line of defense against such victimization is increasing education and consumer awareness.

We also have learned about some of the challenges that law enforcement officials face on both sides of the border, and I think that some good work is underway, but clearly, there is more that we can be doing to simplify the process and to encourage cooperation on both sides of the border.

I also think that this Subcommittee will continue its work in this area, and I am going to approach our Chairman about joining me in signing a letter to President Bush urging that he make fighting cross-border fraud a personal priority in the dialogue that he began with the Canadian prime minister at the summit in April, building upon the work that Detective Elliot mentioned that was started in the previous administration.

I also think that this Subcommittee may be able to strike a direct blow against some cross-border fraud ourselves. As the result of the information that was provided to us during the investigation of Mrs. Hersom's case involving her husband, we contacted Western Union. I issued a subpoena, and we have found the name and the location in Canada where her husband sent thousands of dollars. We also have evidence of a great many other wire transfers that were sent to the names in this particular location. So, in other words, we have acquired some direct evidence of what appears to be yet another cross-border fraud ring. So I will, again, be approaching the Chairman about a referral to the Department of Justice so that this matter can be investigated further.

Again, thank you very much for your testimony today. Our hearings will continue tomorrow, and the hearing is now recessed until tomorrow at 9:30.

[Whereupon, at 12:27 p.m., the Subcommittee was recessed, to reconvene at 9:30 a.m. on Friday, June 15, 2001.]

CROSS–BORDER FRAUD: IMPROVING TRANSNATIONAL LAW ENFORCEMENT

FRIDAY, JUNE 15, 2001

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:36 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Carl Levin, Chairman of the Subcommittee, presiding.

Present: Senators Levin, and Collins.

Staff Present: Linda Gustitus, Chief Counsel and Staff Director; Mary D. Robertson, Chief Clerk; Laura Stuber, Counsel; Christopher A. Ford, Minority Chief Counsel and Staff Director; Frank Fountain, Senior Counsel to the Minority, Marianne Kenny, Detailee/Secret Service; Susan M. Leonard, Congressional Fellow; Alan F. Stubbs, Detailee/Social Security Administration; Bos Smith, Intern; and Kim Wojcik (Senator Akaka).

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Good morning. The Subcommittee hearing will come to order.

This morning, the Subcommittee holds a second day of hearings regarding cross-border fraud. Yesterday, we began these hearings by hearing from the victims of cross-border telemarketing fraud. Their testimony placed a human face on the cold statistics of financial loss and potential ruin that can result from the crimes of con artists operating from beyond our borders, outside the reach of ordinary law enforcement efforts, but not so far off that they cannot plague American consumers with smooth-talking fraudulent telephone pitches and bogus direct mailings.

Our second panel yesterday placed this problem in perspective by describing the sweeping reach and the high volume, and the growing volume, of cross-border fraud and what American and Canadian law enforcement authorities have begun to do about it. We heard from a Canadian official, for example, who explained an initiative called Phonebusters, which illustrated both the importance of international information-sharing and of aggressive consumer education and awareness campaigns in combating cross-border fraud.

We also heard from a representative of a State attorney general's office who explained the impact of cross-border fraud on the constituents of that State from the perspective of a prosecutor who has worked long and well with her counterparts across the border. Fi-

nally, we heard from a representative of the U.S. Postal Inspection Service who discussed efforts aimed at stemming the flow of fraudulent solicitations and efforts made to educate the American consumer.

As I noted yesterday, the relationship between the United States and Canada is one we treasure. It is built upon a solid foundation of close economic, cultural, and political ties. This interconnectedness, however, makes it easier for cross-border con artists to prey upon the citizens of another country, even while the presence of an international border makes cross-border law enforcement far more challenging.

As a final note before we hear from our witnesses and our Subcommittee Chairman today, I should note that one party we had hoped to hear from is not present today. In early May, I invited a representative from the Royal Canadian Mounted Police to testify at these hearings. I had hoped that he would be able to discuss with us the challenges and opportunities of fighting cross-border fraud, as seen from his perspective as an officer of Canada's premier national-level law enforcement agency.

Just a few days ago, however, we were informed by the Canadian Embassy that its government had decided to prohibit all Canadian national-level officials from participating in our hearings. This is troubling, since a major purpose of these hearings is to foster and promote more U.S.-Canadian cooperation in preventing and prosecuting cross-border fraud. In any event, I very much look forward to hearing the testimony of our American witnesses today.

Again, I would like to thank Chairman Levin for agreeing to hold these hearings and for working so closely with me on this important issue.

Thank you, Senator Levin.

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN [presiding]. Thank you, Senator Collins. First, let me thank you and again say just how important this subject is to many of our citizens who are being fleeced by these crooks and con artists.

Senator Collins has been extremely active in a whole host of areas in an effort to protect our consumers in this country. Our seniors in this country are some of the most vulnerable people who are the targets of these crooks. These hearings were scheduled by her and I am delighted to follow through with them because the subject is so important.

As Senator Collins indicated, yesterday we heard from three victims of the con artists who perpetrate these frauds, and their stories were truly disturbing and truly touching. In each of the cases, the victims genuinely believed that the crooked solicitors were telling them something truthful. They were taken in by the manner and the claims of these solicitors. We also heard about a very successful Canadian program designed to stop these kinds of scams. It is called Phonebusters. It is an excellent model for the work that we could be doing in the United States.

Today, we are going to hear from three U.S. law enforcement officials who are going to talk about their views on the current state of U.S.-Canada cooperation with respect to cross-border fraud and

how we can improve such coordination in the future. I also hope that they will address the question of whether or not there are loopholes or weaknesses in our own laws which should be corrected.

The subject matter of these hearings is similar at least in one respect to hearings which the Subcommittee held in 1999 on deceptive mailings and sweepstakes promotions. Those hearings eventually led to the Deceptive Mail Prevention and Enforcement Act which Senator Collins and I introduced and sponsored and got adopted.

Like the 1999 hearings, the target of these fraudulent promotions is generally the elderly. But in the fraud that we are looking at yesterday and today, there is one key difference. The perpetrators here are outside of the United States and our law enforcement officials don't have as much authority to catch these criminals.

Other countries work closely with us; Canada surely does. As Senator Collins points out, they are a treasured neighbor, both directly and in our States, as a matter of fact, since the border rests along Maine and Michigan as well.

But there are obstacles, no matter how good the intentions are, to cross-border enforcement. Any criminal with a cell phone or a laptop computer can set up a scam operation very easily in a foreign country. They don't need to have an office or a room. Telemarketing is a movable crime that is difficult to trace. In a pinch, cell phones can be discarded, so can computers. Even if an illegal solicitation is traced to a particular cell phone or computer, it could be gone by the time the trace occurs.

The fast nature of this crime makes it imperative that we work to improve interstate, interagency and international coordination of these cross-border frauds. Many of our Federal agencies are working to educate vulnerable groups and individuals. We heard yesterday about the "Know Fraud" program, which is a mail campaign designed to fight telemarketing fraud which is coordinated with the American Association of Retired Persons, AARP, the Federal Trade Commission, the Justice Department, and the U.S. Postal Inspection Service, among others.

Today, we are going to hear about the Justice Department's grants to States for senior fraud prevention programs and about the Federal Trade Commission's Consumer Sentinel, a large consumer fraud complaint database.

But despite these efforts, it appears that consumers still often don't know where to go when they are the targets of telemarketing scams. The Postal Inspection Service told us recently that "consumers are uncertain as to what entity they should send their fraud complaints to."

There are a number of options: Local police, State attorneys general, FBI, the Department of Justice, the Federal Trade Commission, and the Postal Inspection Service, among others. One answer to this may be to have a 1–800 number for all persons across the country seeking Federal assistance to call, and the various cases could perhaps then be assigned to an appropriate agency from that point, similar to the successful Phonebusters in Canada. The FTC has its own consumer fraud hotline, and perhaps that is the hotline

to build on. I am not sure it has the public awareness that the Phonebusters hotline has, but nonetheless, that is at least one possibility.

Another issue is that of coordination between Canada and the United States in fighting these crimes. President Clinton took the lead on this issue in 1997 when he met with Prime Minister Chretien. At that time, they directed officials from both countries to prepare a joint study to examine ways to counter cross-border fraud. The United States-Canada Working Group was formed as a result and it released its report, with a number of recommendations which the witnesses today will be discussing. That working group continues its work and will meet again, I understand, next week.

Again, I want to thank Senator Collins and her staff for their pioneering work in this area, and we look forward to today's testimony. I wish I could stay for it. My staff will be here because I can't.

But at this point now, in keeping with our rules of this Subcommittee, we will ask our witnesses to stand, raise your right hand, and be sworn in.

Do you swear that the testimony that you will give before the Subcommittee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. SORRELL. I do.

Ms. WARLOW. I do.

Mr. STEVENSON. I do.

Senator LEVIN. Thank you.

We have three witnesses today: William Sorrell, Attorney General of Vermont. We are delighted to have you here. A nephew of mine now lives in your capital, so if I can get back here before this hearing is over, I may ask you how he is doing, even though you don't have the vaguest idea how he is doing.

Mr. SORRELL. Well, we only have a population of about 7,000 in the State capital, so I might know him.

Senator LEVIN. Well, he has only been there a month or two.

Mr. SORRELL. I still might know him.

Senator LEVIN. You still might know him. It is a small capital. Anyway, thank you for being with us, General.

TESTIMONY OF HON. WILLIAM H. SORRELL,[1] ATTORNEY GENERAL, STATE OF VERMONT, MONTPELIER, VERMONT

Mr. SORRELL. It is my pleasure to be here, Mr. Chairman. Senator Collins, thank you, too.

I am pleased to represent my office and the National Association of Attorneys General in addressing issues of telemarketing fraud, particularly cross-border telemarketing fraud.

Senator LEVIN. Let me ask you, if you would, to bring your mike as close as you can. We will ask you each to summarize in about 10 minutes, so that would leave adequate time for questions.

Mr. SORRELL. The attorneys general laud your Subcommittee for addressing this issue. As you no doubt heard yesterday, telemarketing fraud presents significant challenges to law enforce-

[1] The prepared statement of Mr. Sorrell appears in the Appendix on page 152.

ment. The financial losses to Americans number in the billions of dollars. It is a vastly unreported crime. When the reports are made, the cases are difficult to investigate and more difficult to successfully prosecute. When you add the cross-border component to it, with a perpetrator typically in Canada and the victims in the United States, those hurdles that I talked about increase significantly.

Today, I would like to address a few concerns or problems that the State attorneys general recognize from our experience in going after these cases and some suggestions of congressional action that might assist us to make our jobs easier.

The cases of cross-border telemarketing fraud—I don't know whether Vermont is unique, and perhaps Canadians think Vermonters are particularly gullible, but whereas nationally, I think, the percentages differ, in our office over the last 18 months we have looked at 90 separate cases of telemarketing fraud. Of those, all but four involve calls being made from Canada into Vermont. So the vast majority of the telemarketing fraud cases that we have looked at in the last 18 months have involved a cross-border component.

The first issue I would like to address is the time that it seems to be taking for there to be action under the Mutual Legal Assistance Treaty and extradition processes.

It seems to the States that it takes an unduly long period of time when we make so-called MLAT requests to the Department of Justice and/or extradition requests to the Department of Justice. It seems to us to take an unduly long time for these requests to be addressed.

Now, we are mindful of the fact that significant crimes of violence will be placed higher on the priority list for attention. But, anecdotally, waiting 6 months for any reaction to our requests, and then after making necessary revisions to submissions, waiting as long as 2 years or more for an extradition request to be sent on to Canadian authorities, and then potentially further attendant delays within Canada, seems unduly long to us.

When we asked the Department of Justice and the Federal Trade Commission for information on the average length of time for the processing of such requests, they did not seem to readily have that information. So we would appreciate your assistance in requesting periodic reports on a quarterly or semi-annual basis on the timing of when requests come in and the time for initial response to the States, and then ultimately in the extradition matters when the communication went to the Canadian Government requesting extradition or a final determination that extradition would not be requested, and similarly, under MLAT processes, when the ultimate request went to Canadian authorities for the documentary evidence or other materials sought through the request.

We would ask that there be some encouragement brought to bear to have the Department of Justice, the FTC, and State, local and Federal law enforcement officials sit down and see if there are ways that can speed these processes. To the extent that it is at the Department of Justice that there are resource needs. That the Department is prioritizing, as I indicated, other matters—terrorist bombings and such, and additional resources at the Canadian desk

are needed—we would ask the Congress to appropriate the funds to make those resources available.

Formerly, there was an arrangement whereby an assistant attorney general from a State served as a fellow at the Department of Justice in the extradition office, where the State continued to pay the assistant attorney general's salary, but travel and housing expenses were picked up by the Department of Justice.

It is possible that revisiting that kind of a program, reinstating that kind of a program, would be something that would be sort of a win-win; not a lot of extra money for the Department of Justice, but we would have somebody there physically with the priority in mind for handling the MLAT and the extradition requests coming from the States.

Moving to a second issue, funding issues for travel of victim witnesses and investigators to Canada, we have issues, of course, about the aggressiveness with which Canadian law enforcement addresses problems when the victims are in the States and the perpetrators are in Canada. For victim witness travel to Canada, the Canadian officials have taken the position that unless there is a guarantee that an individual State or the Federal Government is going to pay for victim witness travel to Canada to participate in legal proceedings, they won't go forward with the case in Canada without those assurances.

I know the FTC has made arrangements to make best efforts to fund that travel. But under Bureau of Justice Assistance (BJA) grants, as I understand it, they cannot be used to fund victim witness travel to Canada. We would hope that those restrictions would be eased.

When it comes to investigator travel, what we have found—and this is anecdotal, but what we have found is that dealing with the Canadian bureaucracy for the kinds of investigative information that we need when we are focusing on a Canadian perpetrator—aliases, criminal record, business associates, perhaps targeting other ongoing Canadian investigations and such, much of the kind of information that is not gathered, as I understand it, through the Phonebusters operation and Consumer Sentinel—it is personal contact from law enforcement to law enforcement that works rather than just a call into Montreal P.D. or Toronto P.D. that kind of gets set there off on a desk.

If you can form personal contacts sergeant to sergeant, you tend to get more positive results. So to the extent that you could appropriate funds for investigator travel, for State or local investigators from the United States to travel to Canada for these cases, that could be helpful to forge those kinds of personal relationships that would foster a better exchange of information.

I will say that you could leverage the funds with some sort of a revolving fund through NAAG, or the National Association of AGs, whereby we would require in a successful case that the costs of investigation be reimbursed, and we would replenish that fund so it wouldn't be just a simple draw-down.

I know my time is running short, so just a third issue is a lack of resources to hire Canadian counsel to try to freeze assets that are in Canada of these perpetrators. As you probably heard yester-

day, it is like getting money out of a stone to actually recover from these individuals.

Private counsel in Canada usually require up-front payments of thousands and thousands of dollars as retainers to process these cases, and we would hope that you would appropriate some funds for that purpose. Again, a revolving fund for that purpose is something that would make sense so it could be replenished in those cases when we successfully obtain assets in Canada after a successful prosecution.

My time is up. I would be happy to field questions now or after the full panel has addressed you.

Senator LEVIN. I am going to interrupt the flow here just to ask one question, and perhaps Senator Collins wants to, too.

I was unclear on one thing you said about restrictions on funds for victim travel. I thought you said BJA.

Mr. SORRELL. Bureau of Justice Assistance monies. It is my understanding that the States are not allowed to use those monies for victim witness travel to Canada under current restrictions.

Senator LEVIN. And that fund is a Department of Justice fund?

Mr. SORRELL. Yes.

Senator LEVIN. Then I would appreciate, if you would, Ms. Warlow, your addressing that restriction and whether or not that should continue. It seems to me that goes to the heart of the matter as to whether we can get the victims to Canada. The extradition thing, it seems to me, is so long and complicated and time-consuming that if we can get victims there and if we can get people there working with law enforcement on a much more personal basis, as you just pointed out, it seems to me that may be the most direct way we can do the enforcement part of this.

But in any event, if you could address those restrictions——

Mr. SORRELL. In those cases when we can get the Canadian authorities to prosecute against the perpetrators physically located in Canada, it is absolutely key for our victims to be able to get up there to participate in those proceedings.

Senator LEVIN. Thank you very much. Ms. Warlow.

TESTIMONY OF MARY ELLEN WARLOW,[1] ACTING DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Ms. WARLOW. Thank you, Mr. Chairman.

Senator LEVIN. Identify to us what your position is.

Ms. WARLOW. Certainly, I currently hold the position of the Acting Deputy Assistant Attorney General in the Criminal Division, and in that capacity one of the sections that I supervise is the Fraud Section. It is our Fraud Section that, for the Division, is taking the lead in cross-border telemarketing fraud.

Frankly, one of our senior attorneys, Jonathan Rusch, is a key player in the U.S.-Canada Working Group on Telemarketing Fraud.

[1] The prepared statement of Ms. Warlow with an attachment appears in the Appendix on page 158.

Senator COLLINS [presiding]. I am sorry, Ms. Warlow. We still can't hear you very well. They are very directional, so if you could pull the mike up a little bit, that should do it. Thank you.

Ms. WARLOW. I was saying that I supervise the Fraud Section in my current position, and the Fraud Section is a key component in this. Our senior attorney on the issue of telemarketing fraud, Jonathan Rusch, is, in fact, the U.S. Chair of the U.S.-Canada Working Group that has been referred to already. So I am the Acting Deputy Assistant Attorney General. My other job, frankly, is that I am a senior counsel for national security and international matters, and have had long experience working with Canada in that role.

If I may submit my written statement for the record, I would like to at this time.

Senator COLLINS. It will be entered in full, as will all of your prepared testimony.

Ms. WARLOW. Thank you. I will try to briefly summarize what the Department of Justice is doing to work toward more effectiveness in combating cross-border telemarketing fraud.

First, a brief overview of the problem; I don't think I have to go into detail. You certainly seem well-apprised of the problem and have had a series of witnesses. I will summarize what we are doing and then talk a bit about some areas where we need to look at how we might enhance our effectiveness.

It is next week that the Working Group on Telemarketing Fraud will have their annual meeting in Canada. It will be followed by, in that same week, the meeting of the Cross-Border Crime Forum, which is presided over by Attorney General Ashcroft and the Solicitor General of Canada, and this telemarketing fraud is one of the issues that is the subject of that Forum.

Certainly, there is no question that telemarketing is a huge problem in terms not only of economic loss, but the injury to victims and the severity of that injury. We have made advances, certainly, in operational initiatives with Canada. There have been legislative advances; Canadian law has improved. But the fact remains that this is a pervasive crime and a very serious one.

Currently, the activity is centered in three metropolitan areas—Vancouver, Toronto and Montreal. In Montreal, there are estimates from our experts of 5 to 10 large telemarketing operations, and more than that in the Toronto area: 50 to 60. And some of these have up to 50 employees; they are major operations. In Vancouver, the estimates are even higher, over 200, 220 to 250 telemarketing operations, again some very small, 2 or 3 employees, some up to 40 employees. So Vancouver is a considerable center of activity for this.

Of course, it is not the fact that we only have the phenomenon of Canadian-based operations targeting U.S. citizens. We have had two cases in which there were U.S. operations targeting Canadians, out of Buffalo and Florida. But, of course, our focus here is on the pervasive phenomenon of the Canadian-based operations.

What is appended to my statement is the report to the Working Group on what the United States has done to implement the 14 recommendations of the Working Group. We believe we are substantially in compliance with them. I want to briefly deal with two of those recommendations. The first one is a very general one, but

it is one of great significance: Treating telemarketing fraud as a serious offense, recognizing it and devoting the resources to it.

The Department of Justice has, since the early 1990's, regarded telemarketing fraud as a serious problem. We had three major undercover operations in the 1990's, with 1,400 defendants in all. Just in the last 18 months, we have had 12 significant cross-border cases. There are summaries of those cases in my statement. I won't go into the details of them.

Again, you see the same pattern, the most disturbing pattern, which is the victimization of the elderly in these cases and, of course, any variety of schemes. As Attorney General Sorrell has indicated, they are of quite different varieties and cleverness in how they are presented.

But one of the successes, I think, in our most recent case initiatives—first of all, I think we are doing more in part because of the implementation of these recommendations. Also, something that is encouraging to us is getting increased sentences.

For example, one of the cases, the case of Eduardo Cartagena, resulted in a 70-month sentence of imprisonment, and this was particularly based on the enhanced penalties which were enacted by the Congress as part of the telemarketing legislation in the mid-1990's, and it relates to the victimization of what we call vulnerable victims, or the elderly in this case. And those penalties and subsequent sentencing guidelines really give us the potential for more significant sentences.

We have had, in addition to criminal prosecution, some success in the civil area. I think I would agree very much with Attorney General Sorrell that one of the most frustrating aspects of this problem is with recovery of money for victims. I think generally that is the case. It is even harder when you have a border to deal with.

Our Civil Division has had some success in civil enforcement in freezing assets in Canada. In one case, we were able to get $1 million back in restitution, and this might be something that we could explore more as a way to work together. Certainly, trying to at least get some of the funds back is extremely important to us.

As has been mentioned, we work with the States and the National Association of Attorneys General particularly in training and some projects with the States. We have an ongoing and significant training initiative in telemarketing both for our own people, State and local people, and with the Canadians.

Part of our work has focused on the notion of task forces. The development of the three task forces in Canada has been a significant help to us. These are in Montreal—and you have heard, I think, extensively about the one in Toronto. There is also one in Vancouver. Again, these correspond to the three centers of the problem.

The FBI supports and works with these task forces through something called Operation Canadian Eagle. It is a pairing operation in which, for example, the Boston field office is paired with Montreal, Detroit with Ontario, and Los Angeles with Vancouver. Again, these are supportive of the task forces in Canada.

This effort of the FBI—and it is certainly not the only effort—the Postal Service and Customs Service are significant players in

this. But Operation Canadian Eagle has resulted so far in 2 years of its work in the charging of 62 individuals and the return of over $2 million to victims. These Operational Canadian Eagle cases are some of those that are summarized in my statement.

Now, the real question is how to improve cross-border cooperation. Again, since the formation of the Working Group in 1997, which really focused our attention on the U.S.-Canadian effort, I think we have made some significant advances in meeting those recommendations. For example, enhanced penalties was one of the recommendations that we had, and more training. All of these are again detailed in the attachments to my statement.

Certainly, one of the most challenging things is looking at how we can sustain adequate resources to support the investigation and prosecution of these cases. They are a priority, they are difficult to investigate. So this is an issue of how do we measure our level of support, how do we sustain it particularly, in candor, in times when we have not great increases in the law enforcement budget. But that doesn't mean it is an impossible problem. You can deal through prioritization and making more effective use of the resources that you have.

Now, two other areas where we need to look carefully. One has been noted by Attorney General Sorrell, and that is the problem of dealing with the testimony of the victim witnesses who find it very difficult to travel to Canada. We have new opportunities because of Canadian legislation which allows videoconferencing, but this is really in its first steps. Issues of cost and of just the logistics of arranging for even the videoconference testimony are difficult. This is something we are going to try to work on with the Canadians.

And the final issue is that of how do we improve our cooperation under these formal mechanisms, which are extradition and particularly the MLAT. One of the focuses of discussion at the Working Group next week will be trying to find ways to move these requests forward in a more timely manner.

There are legal impediments at times, there are problems, but I think this is recognized as the most significant problem that we have in administering our treaty in these cases. So, that will be one of the focuses of the Working Group meeting next week, and certainly is one area where we need to look to improve our record.

Thank you.

Senator COLLINS. Thank you for your testimony.

Our final witness this morning is Hugh Stevenson, who is Associate Director of Planning and Information of the Bureau of Consumer Protection of the Federal Trade Commission.

TESTIMONY OF HUGH STEVENSON,[1] ASSOCIATE DIRECTOR, PLANNING AND INFORMATION, BUREAU OF CONSUMER PROTECTION, U.S. FEDERAL TRADE COMMISSION, WASHINGTON, DC

Mr. STEVENSON. Senator, thank you. I am Hugh Stevenson from the Federal Trade Commission. Thank you for this opportunity to talk about cross-border fraud and for holding these hearings.

[1] The prepared statement of Mr. Stevenson with attachments appears in the Appendix on page 191.

We have submitted written testimony, and also a statistical report which I think has been referenced before during the hearings. I would like to just highlight a few things from the materials we have submitted.

One of the best ways to start addressing this problem of telemarketing fraud is exactly the way this Subcommittee has done; by listening first to the victims. We heard yesterday from the victims describing their experiences, the effect it has had on them.

We also need to listen to victims in a more systematic way, to make the best use that we can of the information, the evidence that they are providing to us, what they are telling us. That has been a driving concept for us in developing the project that you referred to earlier, called Consumer Sentinel.

Consumer Sentinel is a project that the Federal Trade Commission started back in 1997, in partnership with a number of other agencies, including Canada's Phonebusters, whom you heard from yesterday. The idea here is to create a central repository for consumer fraud complaints that come in from various sources, from the FTC, from Canada's Phonebusters, from many Better Business Bureaus, from the National Consumer League, and the like.

We then provide secure Web access to law enforcers to those complaints, which now number more than 300,000, and we also provide access to other intelligence and law enforcers in the United States and Canada. We now have several hundred agencies signed up for that Web-based cyber tool.

What Consumer Sentinel tells us about this problem is detailed in our report, but I wanted to highlight a couple of things. First, the cross-border victims here come from anywhere and everywhere. As the map we have here shows, we have received in the year 2000 significant numbers of complaints from people in every State in the United States.

The second point to emphasize is that the loss here is substantial, with tens of millions of dollars in losses reported, and in 2000 alone about $20 million in losses reported by U.S. consumer victims against Canadian companies.

The third thing we want to note is that this is by no means a one-way street, the way that cross-border fraud works. The pattern we are seeing now, though, is that the cross-border victims are predominantly U.S. consumers complaining about Canadian companies, about 70 percent of them, as we can see from this pie chart.

Now, what do we do about this? Well, on the domestic front the FTC has for many years aggressively battled telemarketing fraud. We have used our civil enforcement powers to get courts to put a halt to scams, to recover tens of millions of dollars for consumers, to use the powers that we have to work up cases quickly. This approach of putting them out of the fraud business and grabbing the money you can, has been a very effective complement, we think, to the criminal law enforcement approach of putting them in jail. To borrow a phrase from one of the victims yesterday, Mr. Hathaway, who was saying the con artist is going to ask, is this easy money, one of the goals is to take that money away so it is not so easy after all.

When you are dealing with cross-border fraud, though, you have more challenges, and I think we have heard from my colleagues

here about some of them. Let me just emphasize a couple from our perspective.

One, getting the information to work up a case is a greater challenge. When the fraud is international, so is the evidence, and that means sometimes it is harder to get and sometimes it is slower to get. I think a theme that we heard from both my colleagues from Justice and Vermont is that speed is an issue here. How fast can you get the evidence to chase the bad guys?

The second point is sharing information with foreign agencies can be more challenging. The rules of the road on information-sharing mean that there is some information that is stopped at the border as we try to share with our Canadian colleagues, or in some cases as they try to share it with us.

A third issue that Senator Levin touched on is making remedies effective across borders is a challenge. Chasing money across borders is a challenge, and we have had some experience with this. It is possible, but it is more difficult. And even sometimes finding money across borders in order to chase it is more difficult when the borders are involved. What all this means is that the bad guys can use the borders as an obstacle to law enforcement.

We have worked to overcome these problems in a couple of ways that I think are instructive. First, we have worked with our Canadian colleagues and our American colleagues to develop Consumer Sentinel. We have used this as a vehicle to fight telemarketing fraud and Internet fraud and identity theft and cross-border fraud, and there has been a real value in grouping together the information to do that.

We have also worked on the bi-national regional partnerships that the witnesses have referred to. We were the original U.S. partner in the Ontario Strategic Partnership. We funded witness travel. We provided computer and intelligence support, including intelligence using the data in Consumer Sentinel. We have worked up evidence, witness declarations, for Canadian prosecutions.

The result has been there, from relatively little activity, just since 2000 the Canadians have had more than 80 arrests and several hundred thousand dollars have been returned to American victims in restitution orders.

We have also worked for a number of years on the British Columbia Project Emptor project, along with other agencies. Particularly, we have worked with the British Columbia Ministry of Attorney General bringing parallel civil actions on both sides of the border, in some cases freezing money, and in those cases returning probably about $2 million in restitution.

We have also worked on consumer education, a theme we heard quite a bit about yesterday, and we have brought some of our materials to show. We have more than 150 different publications, many of them on topics relevant to telemarketing fraud.

Overall, since fiscal 1997, we have sent out over 25 million paper publications on a variety of topics, 15 million Web online accesses of our materials, and we have also held focus groups to develop material to focus on helping consumers and what we can do to bring them into a toll-free number.

We have an array of different materials. We do postcards, we do bookmarks. We try to have a series of different messages, depend-

ing on what will appeal to consumers. If they drive a car, maybe they have a bumper sticker. Well, maybe they don't have a car, so we have run this on the sides of buses.

Well, maybe they don't ride the bus and they stay home, so we have refrigerator magnets. Well, maybe they don't have a refrigerator, so then we have fans. We have tried in various ways to reach out to consumers using different messages to reach the target population.

Well, what more can we do here? There is more to do, although there has been substantial progress made since the 1997 report on a number of fronts.

First, to echo a theme that I think has been made here, we need to do even more to improve information-sharing. One thing we plan to do there logistically is to strengthen Consumer Sentinel's role as a central repository for consumer fraud complaints. We need to get data from even more sources to make this cyber tool every more cyber-smart, even more useful for the people who are using it. We need to expand the number of people who are using it.

There are a number of tools that are on the Web. There are a number of interesting things. One joint project with DOJ and NAAG is an index of undercover tape recordings that have been made for investigations that we have put on and made available for people to use to get that information fast because speed is important.

We also are aiming to strengthen Consumer Sentinel as a vehicle for communication and coordination. One of the issues we also heard about today and yesterday is the problem of just communicating with the other consumer cops on the beat in order to coordinate to take effective action.

We would also like to encourage other members to be active partners in the Consumer Sentinel project. We have had a postal inspector detailed as a program manager for a year. We have had a Secret Service agent detailed to work on the identify theft aspects of this, and having them right there at the data hub has been very effective.

We have also worked up some materials to promote to law enforcers the use of Consumer Sentinel as a source of information, a cyber tool for fraud-busters.

On a broader front, on a legal front, we need to look also at how to modify the legal framework here to improve information-sharing. This, I think, also echoes some of the comments that have been made earlier. There are several issues to consider: What information is it that we need to share that we have difficulty sharing, in what cases do we share it, and also what legal vehicles are there that could be used here.

We heard some references to MLATs, which are focused actually on criminal matters. There are other vehicles to consider, mutual assistance legislation or other possibilities. I think one of the things that the Commission has recommended is working with our colleagues in the United States and Canada to explore what the options are to move forward on that front.

We also need to explore how to make our civil remedies more effective across borders. For example, we need better tools, I think, as the comments suggest, for chasing the offshore money. There

are some options out there, but the name of the game here is not just to win against the bad guys, but to win efficiently because we have to win a lot or else it still stays, as Mr. Hathaway said, easy money.

Finally, we need to look for even more opportunities to cooperate in concrete ways with our Canadian counterpart agencies. It is important to rise to these challenges both because this is a problem right now—people are being hurt right now—but it is also an opportunity and a challenge because with the globalization of telecom, of the Internet, of financial transfers and financial institutions, these are problems that we are going to see more often and not less.

Thank you.

Senator COLLINS. Thank you very much, Mr. Stevenson.

One of the disturbing statements that we heard yesterday from all three of our victims is that not one of them received a penny of restitution as a result of the fraud that they had suffered. In talking with attorneys general and other law enforcement officers, we found that that is the rule rather than the exception.

Mr. Stevenson, you mentioned that the Consumer Sentinel system reported $20 million of losses that were reported by U.S. consumers last year against Canadian companies. I see that this year the projected figure is $36.5 million, so it is certainly going in the wrong direction.

Do you have any idea in the previous years what percentage of recovery or restitution was in these cases?

Mr. STEVENSON. I don't have exact figures. Certainly, the anecdotal evidence that we have suggests that the percentage of recovery is very small, and indeed the percentage of consumer victims who complain is very small.

Senator COLLINS. One of the aspects that is going to discourage consumers from reporting is not only the indignity that they have suffered in feeling that they were taken advantage of—and that obviously hurts their pride—but if they don't think there is any chance they are going to get their money back, it discourages them from reporting the crime.

Mr. Attorney General, based on your experience in Vermont, have you also found that the likelihood of getting restitution for consumers when you are dealing with cross-border fraud is low?

Mr. SORRELL. It is not just cross-border fraud, Senator. These are scam artists; they are not legitimate businesses. I mean, we have a pretty good track record in other consumer fraud matters when we are going against ongoing businesses of getting reimbursement for our consumers.

But if we obtain 1 percent of the money that goes to these scam artists, whether it is sweepstakes issues or to reinstate their credit history or whatever, that would be a win. The reality is you have got to find them. I mean, these are not brick-and-mortar operations. All they need is access to a phone, and then whatever they are using the money for, they don't have a long useful life.

So you have got to identify them, find that they have assets so you can get your hands on them, if you can identify them and hold them accountable before you can grab the assets. So we certainly

wish we could do more in terms of getting restitution, but I think I mentioned before it is sort of a blood out of a stone situation.

So our emphasis has really been on the education side, preventing it in the first place.

Senator COLLINS. I think that is absolutely key for just the reason that you have said. And your distinction between scam artists who are setting up shop or a boiler room 1 day and are gone the next, versus an ongoing, legitimate business that may be doing some unethical practices, is a very good one.

I spent 5 years in State government in Maine and I oversaw the department that regulated banks, securities, insurance, and licensing boards. We had a very high rate of restitution, but the banks weren't going to disappear, the insurance agents weren't going to pack up their bags in the middle of the night by and large, and the brokerage houses weren't still going to be there. We knew where to find them, and I think that shows the difficulty in dealing with this type of consumer fraud. And it is exacerbated when we have to deal with another country, as well.

Mr. Attorney General, you were talking about whether Vermonters are more gullible, and I don't think that is it and I don't think that is it for Mainers. It is just that if you live in Maine or Vermont or Michigan or another border State, you are used to dealing with Canada all the time. It is a friendly neighbor. There are family ties.

So sending money to Canada or receiving a phone call from Canada does not raise any red flags. It doesn't sound any alarm bells because of the close relationships that those of us who live in border States have with Canada. That is why I think an increased emphasis in our educational materials on cross-border fraud would be very helpful.

The educational materials that I have seen have been absolutely terrific, but by and large they are not aimed at being wary if you receive a solicitation from Canada or another country, and I think that is perhaps an area that we should pursue. I would also like to see the consumer agencies such as the FTC and the attorneys general do a list for consumers of warning signs, typical pitches that they might hear. I think that kind of practical advice would be helpful.

It is startling that Canada apparently has had more success than we have, according to our witness yesterday, in educating its senior citizens about the dangers of fraud. I think the FTC has been terrific, and the Postal Service, as well, and groups such as AARP. But it seems to me that we have to constantly update our materials to respond to what the latest fraud is. These scam artists are very clever.

Mr. Stevenson, do you have any materials or do you plan any materials that speak directly to the issue of cross-border fraud?

Mr. STEVENSON. We do have one brochure that addresses that specifically and the issue of online fraud. And then there are also obviously, as we have heard, the particular frauds involved here, some of which are largely associated in terms of the number of complaints with Canada, the sweepstakes and lotteries and advanced fee loans, where we also have materials that are focused on that.

Senator COLLINS. Ms. Warlow, I want to talk to you about the issue that every single person involved in trying to investigate and prosecute these cross-border frauds has brought up to us, and that is each one has expressed tremendous frustration with the delays involved in the MLAT process, the Mutual Legal Assistance Treaty process.

It is often felt, it appears, to be such a cumbersome process that it, itself, is an obstacle to the efficient investigation and prosecution of cross-border telemarketing fraud. We have heard the attorney general this morning talk about having to wait months for even an answer, and perhaps years if we get into an extradition situation. That strikes me as unacceptable in this situation because these are con artists who will pack up and move to another city or another location. They are not going to be there if we don't act quickly when we have a lead.

What is the Department of Justice doing to try to expedite and streamline these requests for assistance under the MLAT process?

Ms. WARLOW. Well, one thing certainly is to engage in a dialogue with Canada about this problem. It would not be fair to Canada to say it is only a problem with them. We also receive complaints about the timeliness of the process when we are sent requests.

One thing I think that we can do to speed the process is not to overemphasize the use of the MLAT. In the investigative stage, one of the most important things is police-to-police cooperation, exactly the sort of cop-to-cop dialogue that the attorney general has referred to.

I would hope that our folks are making it clear that you needn't rely on the MLAT for all forms of cooperation. The sticking point is there are certain things you do need to look to the MLAT to get.

Senator COLLINS. I am sorry. I couldn't hear you.

Ms. WARLOW. There are some things, however, that you do need to use the MLAT for.

Senator COLLINS. Could you distinguish for us between when it is required that you go through the MLAT process and what kinds of information can you get more informally?

Ms. WARLOW. The way I have tried to describe this—and I have done this with training for our own prosecutors and law enforcement agents—you generally think of two types of information where you need to use an MLAT process. One is where you need to use a compulsory measure in the other country. Now, this means certainly a search. It also means compelling production of documents, and in a fraud case this is significant. There is a significant need for documentary evidence, and so the need for compulsory process.

The other is when you are reaching or looking forward to the trial stage because it is there, when you need evidence in an admissible form, that more likely than not you are going to need some sort of MLAT process, for example, to authenticate documents; or in some circumstances, for example, with a deposition if you need to compel the testimony of somebody. So these are the categories.

To the extent that you can have police-to-police cooperation, that is good. It does certainly depend on contacts in the Federal system. We have the advantage of having a permanent presence in Canada. We have a FBI legal attache's office that is quite active.

One thing that enhances police-to-police cooperation, frankly, is the opportunity to do joint investigations rather than just having the situation in which you come for help. Then, I think the information-sharing is much better. Moreover, let's say that we are working with the Canadians. The Canadian authorities aren't dependent on some sort of request from us to invoke their own legal authority. It is their own investigation.

So the extent that we can work more cases jointly, we will have a better track record. But certainly there are going to be instances in which we need this MLAT. That is clear, and we need to do a better job in timeliness of response. And it is not unique to Canada, it is not unique to these cases.

Senator COLLINS. What I am told is that many law enforcement officers do not fully understand how much information they can get and how much sharing of data they can do without going through the formal process.

Do you think that is correct?

Ms. WARLOW. I would suspect it is.

Senator COLLINS. And what can we do about that to help law enforcement officials be better educated on what they can obtain without going through the formal MLAT process?

Ms. WARLOW. I think we are doing some things in training of our State and local counterparts. We are tending to focus more on the State and local prosecutors. We have had a training session on international issues, I believe, last year for State and local prosecutors. We have had a representative of a State in our Office of International Affairs. I believe we now have one either from the National Attorneys General Association or the National District Attorneys Association.

In addition, we need to be sure we have people who are available for case-specific advice. Also, I think if we can educate our Federal investigating agents, and we generally do have training with them, too, they can also be points of contact for their State and local colleagues in discussing this or pointing them in the direction to talking to the Justice Department itself.

Senator COLLINS. Mr. Stevenson, I understand that Federal law restricts in some ways the FTC's ability to share information with Canadian officials, and that the rules to interpret this law have not been modified since the 1980's, when cross-border fraud was not as prevalent as it is today.

First of all, is my understanding correct, and if so, do you have some specific recommendations on changes in the law that would make it easier for the FTC to share information with its Canadian counterparts?

Mr. STEVENSON. Yes, your summary is correct. There are certain kinds of information that we are prevented from sharing with foreign agencies, where we can share them with State and other Federal agencies. Maybe chief among the categories is the information that we get pursuant to administrative subpoena or compulsory process, and that is part of our statutory setup.

The Commission has not made specific legislative recommendations so much as suggesting that this is an area that does need to be looked at. As Mr. Warlow said, one of the good things we can do here is, in having a dialogue with our Canadian counterparts,

figure out what are the most effective vehicles for sharing information, because one of the things we want to keep an eye on in thinking about what we may be able to do is what our Canadian counterparts may be able to do, how they would respond to greater information-sharing, so that we can encourage greater mutual sharing of information because the key to improving information-sharing is obviously flowing both north and south in order to make this work as best we can.

Senator COLLINS. Mr. Attorney General, are there changes in Federal law that you believe are needed to help coordinate the attack on cross-border fraud?

You have mentioned the need for changes in streamlining the MLAT process and you have mentioned the resources issue. Are there any other recommendations that you would have for the Subcommittee as we pursue remedies to the problems that you have already identified?

Mr. SORRELL. Not specifically that I have in mind, Senator. I am not well-versed in the issues of what information may be exchanged or not. Our emphasis has been on the internal processes and the adequate resources to be more quickly responsive.

Senator COLLINS. Ms. Warlow, I want to give you the opportunity to respond to an issue that the attorney general has raised this morning, that Mr. Stevenson has raised, and that every law enforcement official we have interviewed has raised, and that is the lack of funding from DOJ or other sources to help pay for witness expenses and travel and those essential costs of investigating and prosecuting a crime.

Ms. WARLOW. It is a significant problem. I think there are a couple of facets to it. One is where we are producing witnesses solely for a Canadian proceeding. There can be limitations on how we use our own money. For example, with our Marshals Service, the parameters of its authority deal with matters before U.S. courts.

I am not familiar with the details of the problem of the limitations on the Federal funding that the attorney general has referred to, but I do know that there was a conclusion that those funds that are being used otherwise to support the activities of Vermont and other States were deemed not available for the purpose of witness travel.

I would say that for some time it has been recognized there is a general problem for the States and localities, not just in this particular area of crime, telemarketing fraud, but generally for the States and localities to deal with the unusual expenses that often attach when they have a transnational and international crime—issues of travel, even things as simple as translation and interpretation.

So this is a problem for the States. It is expensive for us as well, but I think particularly for the States, and in some instances the funding for States is localized. We have had instances where a county district attorney's office has been taxed as to whole year's budget in trying to support a single complex international case. So it is a problem.

Senator COLLINS. The final question that I want to ask each of you deals with the problem that each of these cases tends to be relatively small-dollar. Yet, if they were investigated, they often re-

veal a fraud ring that has targeted hundreds or even thousands of consumers. In fact, the losses in the aggregate are quite large.

How does your offices make decisions on whether or not to put the resources into a case to determine whether this is just the tip of the iceberg?

What we have found in doing our own investigation involving one of our consumers, the woman from Maine who testified yesterday, is that when we issued subpoenas to Western Union to try to track down the flow of funds from her husband to the Canadian scam artists who defrauded her husband, we quickly discovered is that it appears that this is part of a far broader fraud ring and that he certainly is not the only victim.

Mr. Sorrell.

Mr. SORRELL. The question is how do we make a decision to proceed in a case not knowing really the magnitude of the case. This is one area in which the attorneys general have been working, I think, quite effectively in the telemarketing arena. We have a periodic written publication on what is going on in telemarketing issues, but perhaps more importantly there are either monthly or bimonthly conference calls for the individuals from the various offices that are working on telemarketing fraud matters.

So in that sharing of information there, we have been working most closely with the States of Ohio and North Carolina that are also under a Federal grant right now for focusing on these issues. And it has been interesting to us to see that matters involving Canadian telemarketers—they are not just preying on Vermonters, but they are also in other States. We are obviously a small office and when we can see a case where there are consumer victims in other States, then that opens up to us working on a multi-State basis.

I think I also mentioned that I have an assistant attorney general who is cross-designated as an Assistant U.S. Attorney. Maybe I didn't mention that. So when we see a case that has significant magnitude, we will work with the U.S. Attorney's office and Canada. We are working one case right now where we have identified 18 separate scam operations being operated by the suspect in the matter. So that is a case where the tentacles of impact go out, and the further we look into it the more we see how broad that is. This is the occupation these folks are in, so it is not a one-shot deal and that is what we find.

Senator COLLINS. Exactly. When there is one victim, there are undoubtedly many others. Indeed, one of the examples that we looked at started with a single victim in North Carolina. It was investigated, fortunately, and it turned out to be an extensive fraud case involving hundreds of victims in 18 States.

The reason I raise this issue is I think it shows the importance of having either the Consumer Sentinel system or the Phonebusters system, where there is somewhere we can aggregate these complaints, look for patterns, and then go after what are undoubtedly complex, sophisticated crime rings that are targeting thousands of our most vulnerable senior citizens.

Ms. Warlow.

Ms. WARLOW. Of course, for the Department of Justice and the FBI, we tend to look at the more complex cases, the multi-district,

multi-victim cases, and ones that involve larger organizations. We should be working with the States in exactly the way that the attorney general has described. It is the particular role of the Federal Government to deal with these widespread crimes, and we have particular investigative authorities, and so on. So that is, in fact, our target.

You have stolen my thunder, I guess, because we would cite exactly things like the Consumer Sentinel program and the library of recorded conversations as tools that allow us to identify where there are patterns and large operations victimizing hundreds of people. So those are exactly the kinds of resources that are very useful in distinguishing the relatively small cases from those where we are getting into a big operation.

Senator COLLINS. Mr. Stevenson.

Mr. STEVENSON. I think that the key is gathering the information together so that we can make intelligent cuts about it and then communicating about it. We certainly have seen cases where the individual loss might be $19.95 or some small amount, and yet when we then brought the cases and we find out about the total loss, it can be multi-million dollars a nickel at a time, so to speak. So it is very useful to look at the information in that way to make the cuts about where the big problems are.

It is also useful to have that kind of information in making the cuts about communicating with other agencies about how we can divide up the work. One thing I don't think you are going to get anybody to say to you is we are kind of running out of potential defendants in this area. There is always plenty of work to go around, and one of the challenges is how do we do this as efficiently and quickly as we can. Which targets does it make sense for the FBI to pursue based on the criteria Ms. Warlow mentioned, for example; which ones for the Vermont AG, and so forth?

One of the things that having the information in a network helps you do is to see what is out there now. We have actually done dozens of law enforcement sweeps with various law enforcement partners, including Vermont and Justice, where we can look, for example, at a particular kind of fraud and say this is what we are seeing out there now. How does it make sense to divide up this work based on a number of different criteria that we might use?

The other thing that we have been working on is better communication about who is working on what. In fact, my colleagues at the Justice Department, John Rusch, and elsewhere, have raised the issue of how do we communicate better about what is going on. And one of the things we developed in the Sentinel network is an alert technology so that people can communicate about what they are looking into or what they have information about, because that kind of coordination is very important to move ahead in this work.

Senator COLLINS. Thank you. I want to thank all of our witnesses for participating today. Your contributions have been very valuable as we grapple with the extent of this problem and possible remedies. I very much appreciate your joining us. Thank you.

During the past 2 days of hearings, we have learned a great deal about cross-border fraud, a growing phenomenon in which con artists in other countries, notably Canada, target victims in our own. In particular, such cross-border criminals tend to target elderly

Americans and their families, innocent victims such as the three witnesses from whom we heard yesterday.

All three of the victims who appeared here, and many more in communities across our country, were directly targeted or had their loved ones directly targeted by cross-border criminals seeking to take advantage of their honesty, their optimism, and their trust. They fell prey to very common scams, such as lottery frauds, sweepstakes, and other attempts to swindle them out of their money.

Their testimony also helped highlight the crucial role of consumer awareness as our first line of defense against such fraud. An educated consumer, aware of the dangers of schemes such as a lottery scam and wary enough to suspect that promises that seem too good to be true probably are, is the single best answer to cross-border fraud.

For this reason, I hope that the hearings that we have held have helped to educate consumers and make them more wary about falling for such pitches. I encourage all of the law enforcement and consumer protection agencies that are involved in this task to continue their efforts to promote better consumer education and awareness programs. I think we can't stop; we have to keep educating consumers because as scam artists change their approaches, or stop using the mail and start using phones for a while and then come back to the mail with a new scheme, their ingenuity requires us to be ever-vigilant.

We have also heard a lot of testimony from law enforcement officials about the challenges in facing cross-border fraud and areas in which further improvement is necessary. I want to pursue those issues with Senator Levin to examine the budget and legislative options that are available to us, and I would invite any of our witnesses to submit to us any further suggestions that they might have in that regard.

On behalf of the Chairman, I would announce that the record will be open for 14 days. There are a number of statements that I have received from other victims and from the attorney general's office in Georgia, as well as from the Canadian Embassy, that we will be submitting for the record.

Finally, I want to thank the Members of the Subcommittee staff who prepared for these hearings, in particular Christopher Ford, Marianne Kenny, Alan Stubbs, Barbara Cohoon, Frank Fountain, and Mary Robertson. They are very hard-working and dedicated individuals, and they have worked very hard during the past 5 months to gather the information for these hearings and I want to thank them.

Let me close by also thanking our new Chairman, Senator Levin, for his efforts. We have had these hearings long planned, but since he is now the new Chairman he could have very easily chosen not to pursue them. He has been a dedicated advocate for consumers and we have worked very closely on a number of consumer protection efforts. So I am very grateful to him for allowing this investigation to be concluded and these hearings to proceed.

Thank you, and this hearing is now adjourned.

[Whereupon, at 10:50 a.m., the Subcommittee was adjourned.]

APPENDIX

STATEMENT OF
JULIA ERB
BEFORE THE
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
HEARING ON CROSS-BORDER FRAUD
JUNE 14, 2001

My name is Julia Erb. I am a resident of Kimball, Michigan, which is about 60 miles from Detroit. I have lived in Kimball for the past 12 years, with my husband, Ed. I have 6 grown children, 14 grandchildren, and 5 great-grandchildren. I have been a small business owner, and I am now retired.

Starting on November 17, 2000, I began receiving phone calls from persons telling me I won various prizes. I don't know why I started to get these calls. The people on the phone sounded sincere, and I was very excited. They asked me to send money to cover various expenses in the delivery of the prizes, and I did, using my Visa credit card or by sending cashier's checks. I never received any of the promised prizes. I can't believe I did this, but in order to stop other people in my situation from doing what I did and losing the money I lost (a total of $2,971), I would like to describe several of my experiences for the Subcommittee.

My first encounter was on November 17, 2000. I was called by a Roy Taylor who said he was calling from the First Liberty Exchange Bank of Carson City, Nevada, phone number, 1-800-223-6971. He said I had won a $60 million prize! He said there were 10 contestants drawn down to 3 who could win, but I came in first. I asked him was he kidding and how many zeros that was, and he laughed and said "6." I said, "You're kidding, right? What do I have to do?" He said, "Just be there." He then asked me for my Visa credit card number, and I gave it to him.

He said I would be receiving 99 British Sterling bonds which were worth $60 million, that I would receive $1,800,000 to start, and that I would get $10,000 every month after January 1, 2001. He then switched me to a Jeff Lee who said that I had entered a sweepstakes several weeks ago, which I didn't remember. Mr. Lee asked me if I had just spoken with Roy Taylor. I said, "yes" and he said he would explain what would happen next. He said I would receive a package in 3 or 4 weeks verifying who I am and that I am Julia Erb of good address and I had won $60 million. He said it would be 99 units of British Sterling premium savings bonds and that I would have a one time legal fee of $1,498 which would go to the lawyers who would put the money in my name for me. He asked me if I could manage that or did I need more time.

He told me that it was important that I not tell anyone about this. I was beside myself. He also said it was imperative for security reasons to speak with a Mr. Jordan Richards who would record our conversation. He said I was to answer only "yes" or "no." Mr. Richards repeated the terms of payment, asked if I understood what he was saying, and I answered "yes."

Then Mr. Lee, who was a real gentleman, came back on the line and said my package would arrive in 3 or 4 weeks. I was to sign the papers they identified and phone him when I got the package. I was surprised I could read my notes, as I scribbled any which way! I could hardly write as I was shaking so. I called Mr. Lee again on November 30, 2000, because I was concerned that my Visa showed $1,498 going to Hyperion Bank in Kansas City, yet he was calling me from First Liberty Exchange Bank in Carson City. He laughed and said "yes, dear." I answered "yes dear," too. He got a good laugh out of that. I said I was so hyper, I'd say just about anything. He said not to worry, that he had many banks and that was the one he used. He reminded me again to call him as soon as I received my package and told me not
to worry and to take it easy. He was so gracious.

I did get worried, however, and called First Liberty Exchange Bank on December 19, 2000, after I didn't receive any package. I got a Mr. Redfield who said he was the President of the bank. Mr. Redfield told me that Mr. Lee wasn't there any longer. I told Mr. Redfield about our conversation and that the $1,498 was charged to my Visa, but I hadn't received a package. He said he'd take care of it. I received a package about 1-1½ weeks later which congratulated me and told me that I now had a "personal exclusive Two Year Premium Bond Membership package." I immediately called Mr. Redfield and said I had the bond package. He told me to sign the two papers in the package and mail them right back to him which I did. The papers I sent confirmed that on November 17, 2000, Hyperion Bank had drawn $1498 from my Visa account which would enroll me in the Premium Bond Program which would entitle me to win the $60 million. The letterhead on the package showed the address as Nicaragua, but Mr. Redfield told me to return the package to him in Carson City. I never received any money. I phoned the bank in Carson City, but the number had been disconnected.

My second experience occurred in March of this year. I thought I was just lucky to get another call. On March 1, 2001, at 5:45 p.m. I was called from Australia by a John Turner who said I was in a drawing that was held every 10 years. He said this was the Australian International Lotto. The drawing was to be held on Saturday, March 3, 2001, at 8:00 p.m. A Michael Wilson came on the phone and gave me a number which he said to tell no one. Number 25185 was the number and the pay-off would be $50 milllion. I was to send $455 (plus the $20 I paid to Fed Ex) by cashier's check for a chance to win to World Marketing Service, in British Columbia, Canada, which I did. I never received anything.

The next encounter occurred on Wednesday, March 7, 2001, when an Andrew Dalton called me from Australia and said that I had just won the top prize of $10 million now and $10 million in the future. Alan Wilson then called me and said he was working with Andrew Dalton. Alan asked me if I were a U.S. citizen or if I had ever been to Australia. When I told him I had never been to Australia, he told me I should come visit and that he would take me around. Alan called me every night for several weeks to ask whether I had sent the money and to talk. According to Alan, I needed to send him $498 for legal fees to pay the Australian income taxes on my winnings. Alan would call at around 9:00 o'clock every night. When the phone rang around nine, I would look at my husband and say "That must be Alan." One night my husband and I went to church and when we got home

the phone was ringing. It was Alan. He said "Where were you? I tried to reach you several times tonight." I said that I had been at church. Alan said "you are a lovely lady." I believe he was a criminal with a conscience. I think he felt bad about what he was doing. On March 7, 2001, I sent a cashier's check for $498 to R.M.G., in British Columbia, Canada. I received nothing in return. A few weeks later Alan stopped calling.

The fourth encounter involved a call from a Mario Lopez from Madrid, Spain, at 8:30 P.M. on March 8, 2001. Mario told me that he knew Alan. Mario said King Carlos and Queen Sophia had a two person drawing and I was one of two winners, the other person being in California. He said the amount of the winnings was $200,000 and that it would be sent to me within one month by Federal Express.

He said I was chosen completely at random because of the way the Americans had helped Spain and they wanted to give back to the United States. He said he needed $1,900 from me. When I told him that I couldn't afford that, he said I would win $200,000 and ten weeks of free tickets to El Gordo, the Spanish lottery. He then said I needed to send $500 which would cover the amount it would take to exchange $200,000 to American dollars from Spanish money at Banco Expano. I sent a cashier's check for $500 to R.M.G. Suite 277, 3351 Kingsway, Vancouver, British Columbia, Canada, V5R5K6. His phone number is 011-31-623-220-192.

I have not received any of the money that I was promised. I lost almost $3,000, and I feel terrible about it. I can't believe I was so stupid to have done this. I just wanted to provide for my children and grandchildren. I don't need anything, but I thought I could do something for them.

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STATEMENT OF
BRUCE HATHAWAY
Columbus, Ohio

Before The
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Hearing On
CROSS-BORDER FRAUD
June 14, 2001

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I would like to thank the distinguished members of the US Senate Permanent Subcommittee on Investigations for providing me the opportunity to speak with you this morning. My name is Bruce Hathaway, Lt. Colonel, United States Air Force; retired and a Certified Public Accountant by trade. I am now 83 and living in Columbus, Ohio. I have come before you today to share my experiences relative to cross-border telemarketing fraud. I have asked my daughter to accompany me here today because as my caregiver she was a victim of the following circumstances as well.

My wife, Helen Hathaway - 92 years old, was confined to a nursing home in March of 1997. Unfortunately, my health insurance does not cover long term aftercare. Consequently, I was forced into a costly self-pay situation regarding her continued care. Shortly thereafter, I began entering direct mail sweepstakes hoping that the winnings could be used to offset the burden of these additional costs. At first I only received several sweepstakes mailings a week, but as my participation in these sweepstakes increased so did the frequency in which I received the solicitations. Before long I was receiving dozens of sweepstakes solicitations a week. Over the next year and a half I spent nearly ten-thousand dollars ($10,000) entering these sweepstakes. On many occasions I believed I had won a significant payout, only to find out later I had not. Unknowingly at the time, it was my participation in these sweepstakes that made me vulnerable to future telemarketing scams.

During the month of July in 1998 my daughter, Ann Hathaway, moved in with me to assist in the care of her mother as well as myself. It was at this time that she began to question me regarding all the mail I was receiving. This is about the same time I began receiving telephone solicitations.

In August of 1998 I received a phone call from an individual identifying himself as Robert Duran. Mr. Duran claimed to be an attorney with the Canadian Law Firm Rudel, Wiseman & Associates. Mr. Duran relayed to me that their law firm had initiated a class action lawsuit against a group of United States sweepstakes companies who were

defrauding Canadian citizens. As a result of this lawsuit a settlement totaling ninety-million dollars ($90,000,000) had been awarded to their firm for disbursement. Mr. Duran further explained that all of the Canadian parties to the lawsuit had been reimbursed, and there were additional monies leftover. By utilizing information obtained from the United States sweepstakes companies Mr. Duran had identified me as a United States citizen who had been victimized by these same companies. Mr. Duran indicated that he was calling me with some great news, and that I was entitled to one hundred and ten thousand dollars ($110,000) as my share of these settlement monies. Mr. Duran further indicated that I could pay Canadian taxes on these winnings (seven percent), and avoid US taxes. He concluded this initial conversation by adding that someone from the Canadian taxing authority would contact me to work out the taxes on my winnings.

Within days I received a call from a woman identifying herself as Mary Thompson with the Canadian Tax Bureau. Ms. Thompson indicated that I would have to pay seven thousand seven hundred dollars ($7,700) in taxes before these monies could be released to me. I attempted to have the taxes taken out of my settlement check prior to it being sent to me but Ms. Thompson claimed that was not possible. I then explained that as soon as I received these settlement monies I would forward them a check to cover the taxes, but again Ms. Thompson refused. She indicated that she would talk to her superiors about releasing these monies to me and call me back.

Ms. Thompson called me back and indicated that I could pay two thousand dollars ($2,000) up front and the remaining five thousand seven hundred dollars ($5,700) would not be due until fifteen days after I received my settlement check. I agreed to this condition and Ms. Thompson told me to go to my bank and get a cashiers check in the amount of $2,000 payable to Tony Wiseman. I explained to her that I would and she indicated that she would call me with further instructions tomorrow.

The next day I went to the bank and obtained the requested cashier=s check. Ms. Thompson did call me back and she told me to the send the cashier=s check to: Carl Benoit and Brenda Jones, CP 242 Succ. S, Montreal, PQ Canada H4E4J8. I mailed the check as requested and awaited the arrival of my settlement monies.

Several days later I received another phone call, this time from an individual named James Jann with the Canadian Tax Bureau. Mr. Jann was calling to indicate that my settlement monies were being held up pending the addition of another hundred and seventy-thousand dollar ($170,000) claim to my initial settlement check. Mr. Jann informed me that these additional monies had to be taxed at the same rate as before (7% or an additional $11,900). I asked Mr. Jann if I could wait until I received the first $110,000 check before I paid taxes on my second check and he indicated that was not possible because there is only one check now (totaling $280,000). Mr. Jann further explained that I could pay three thousand dollars ($3,000) now and the remaining eight thousand nine

hundred dollars ($8,900) upon receipt of my settlement check. I agreed and told him I would go to the bank the next day. Mr. Jann indicated that I needed to make this check payable to Julia M. Wilson and he would call me tomorrow with additional mailing instructions. The following day I did go to my bank and obtain the cashiers check as requested. Mr. Jann did call me back and indicated that I needed to send the check to Julia Wilson's assistant, Gloria Sax @ CP 272 Succ. Mont-Royal, Montreal, PQ, Canada H3P3C5. I indicated to Mr. Jann that I would follow his instructions and put the cashiers check in the mail today. Mr. Jann further explained that I would be receiving my settlement check totaling $280,000 between October 5-9, 1998. He indicated that the check would be delivered via an armored car and the driver would take me to my bank to deposit the check directly into my account. Mr. Jann then reminded me that upon receipt of these monies I would be contacted to make arrangements to pay the additional tax payment ($14,600 - 7% less $5,000 already paid). I mailed the check and waited for the beginning of October.

On September 29, 1998, I received a phone call from an individual identifying himself as John Taylor. Mr. Taylor purported to be with the US Customs Department and indicated that he had my $280,000 settlement check. However, Mr. Taylor indicated that before these monies could enter the United States I had to pay a ten percent customs fee. Additionally, Mr. Taylor indicated that the arrangement I had made with Mary Thompson relative to paying taxes on these monies ($5,000 up front and $14,600 upon receipt) was unacceptable. Taylor indicated that before these monies could enter the United States, taxes (7%) and customs fees (10%) had to be paid in full. Mr. Taylor indicated that I needed to wire an additional forty-two thousand and six hundred dollars ($42,600 - additional $14,600 for taxes and $28,000 for customs fees) or he would have to send the settlement check back to Canada. Mr. Taylor further relayed to me that these monies could be wired directly from my account to the necessary account in Canada. Mr. Taylor explained that he has worked with Ms. Thompson in the past regarding other United States residents and their settlement checks. Mr. Taylor indicated that Ms. Thompson would call me regarding the specific instructions for wiring these additional monies. As soon as Mr. Taylor receives confirmation from Ms. Thompson that these additional monies have been received he will allow the $280,000 settlement check through customs.

Immediately following the end of my conversation with Mr. Taylor, Ms. Thompson called me back. She reiterated what Mr. Taylor had just told me and apologized for any confusion. She instructed me on how to go to my bank and electronically wire $42,600 to them. She said that upon receiving confirmation of receipt of the requested wire she would contact Mr. Taylor and have the settlement monies delivered via armored car to my house. I followed her instructions and went to my bank and wired the $42,600 as requested.

On October 5, 1998, I received another phone call from John Taylor. Mr. Taylor indicated that Mary Thompson had called him and there were additional monies that went

unclaimed and consequently I was eligible to receive three more shares of the settlement monies ($76,000, $135,000 and $1,200,000 respectively). I declined these additional monies at this time, indicating that I first wanted to receive my $280,000 settlement check before I discussed my options relative to any additional shares. Mr. Taylor understood and indicated that my $280,000 check should arrive via armored car this afternoon. Mr. Taylor further indicated that Mary Thompson would call me back this afternoon regarding the specifics of this delivery.

On October 7, 1998, I became concerned when I had not received my check nor a follow-up call from Ms. Thompson as indicated by Mr. Taylor two days earlier. I attempted to contact Ms. Thompson at the phone number she afforded me (514/540-4620), but was only able to leave a message requesting a callback on their answering machine. Later that same day Ms. Thompson called me back. During this conversation Ms. Thompson again brought up these additional claims and after arguing back and forth with her I agreed to two additional claims totaling two hundred and eleven thousand dollars ($211,000 - $76, 000 + $135,000). Ms. Thompson explained that my total settlement check would now be four hundred and ninety-one thousand dollars ($491,000). She further explained that before these monies could enter the United States I had to pay fifteen percent taxes/customs fees on these additional two claims ($211,000 x 15% = $31,650). Ms. Thompson instructed me to go to my bank and wire these monies in the same manner as before. I agreed and planned on going to the bank that afternoon to complete the transaction.

Unbeknownst to me at the time of the last two phone conversations my daughter was listening, and confronted me when I was getting ready to go to my bank and wire the additional $31,650. She indicated that before I wired any additional monies they should check this lawsuit out and verify its legitimacy.

My daughter, Ann Hathaway, contacted the Ohio Attorney General's Office - Consumer Protection Section on this same day. Investigator Robert Morgan explained that I had been hoodwinked by a common telemarketing scam known as the "law firm recovery scam" and not to wire any additional money. Investigator Morgan indicated he would come out to my house the next morning to talk to me and discuss investigatory options.

On the following day investigators from the Attorney General's Office came to my house and met with my daughter and me. They convinced me that I had fallen victim to a scam, and not to wire any additional money. They further explained that this type of scam usually originates from Montreal, Canada making the investigation and prosecution of the suspects difficult. They told me that the recovery of the monies already sent was unlikely, however they could try to determine who was behind this scam with my help. My daughter and me agreed to assist the Attorney General's Office. The investigators placed a

recording device on my telephone that enabled Ann and I to record future telephone conversations.

In addition, I signed a "consent trap and trace order" enabling the Attorney General's Office to work with my phone company's security department to trace these phone calls as well. The investigators explained that Ann and I would have to continue talking to the callers and play along with their scam in order to assist them with their investigation. After discussing methods of manipulating these phone calls, to maximize investigative effectiveness, Ann and I decided it would be best if she dealt with any future calls.

Over the next seven weeks Ann recorded phone calls from Mary Thompson, John Taylor and Mark Davis, alleged partners in the law firm Rudel, Wiseman & Associates. During these calls Ann was able to get Ms. Thompson to explain all the events that had led up to the present situation as requested by the investigators for evidentiary purposes. In addition, over this time period, Investigator Morgan was able to work with my local and long distance phone carriers to trace these calls back to their point of origination. As suspected these calls were traced back to an address in Montreal, Canada. The investigators also instructed Ann to agree to any additional payments necessary to facilitate the release of the $491,000 to myself. Investigator Morgan explained this information would be helpful in the event that local law enforcement on the Canadian end could be enlisted to aid in a "controlled delivery" geared to identifying and apprehending the suspects in question. After talking extensively to Mr. Davis, Ann was instructed to send three additional cashiers checks totaling seventy-eight thousand dollars ($78,000) to secure my settlement check. Mr. Davis instructed Ann to obtain three cashiers payable as follows: 1) $31,350 payable to Charles C. Burton 2) $27,680 payable to Robert D. Duran and 3) $18,970 payable to Tony Wiseman.

Investigator Morgan indicated that with this information he would contact the Montreal area telemarketing task force (Project Colt) and request their assistance relative to apprehending the suspects. Unfortunately, Investigator Morgan informed us that due to a lack of resources "Project Colt" was unable to provide any assistance relative to the present investigation. They did tell Investigator Morgan that the address where the phone calls had originated from was a known "boiler room" in the Montreal area. Investigator Morgan explained to us that he has forwarded all the investigative materials (reports, recorded phone calls, copies of checks and wires) to "Project Colt" for their continued consideration.

Investigator Morgan explained that without the assistance of Canadian authorities our investigation was dead in the water. Consequently, I had the recording device removed from my phone and my phone number changed to a private, unpublished number.

Although Investigator Morgan explained the difficulties associated with this type of cross-border fraud investigation, it was still disappointing to have the investigation abandoned due to a lack of resources on the Canadian end. Investigator Morgan explained that had these individuals been operating within the United States these same investigative methods would have been employed, however in all probability a successful prosecution would have resulted. This fact alone concerns me.

On a personal note, I would like to tell you how this has impacted both my family and me.

First of all, the personal cost of caring for my wife has continued to increase. The aforementioned losses due to fraud only compound the situation. As a result I am concerned about my financial ability to care for my wife and myself as I continue to age. Not to mention the added stress associated with thinking of what kind of a financial burden I may be to my family. This has also forced me to question my own judgment and intellect with a resulting loss of self-confidence. I am embarrassed and try to conceal my own victimization so that family and friends do not think differently of me. I feel that nothing can be done about this crime because it was committed outside of the United States. This makes me feel helpless, and it has infuriated my daughter, causing her additional stress in an already stressful role as a loving caregiver. I have come here today as a way to seek closure. I hope that what I say will not fall on deaf ears and my words will serve as a catalyst for action from this subcommittee.

In conclusion, I would like to again thank the subcommittee members for the opportunity to testify before you today. I am honored to have had the opportunity to speak to all of you and I hope that you will think of all of the seniors across the country whom have fallen or will fall victim to a similar scam. If it is true that these criminals use the United States-Canadian border to avoid detection and apprehension from United States law enforcement, please work with the Canadian authorities to level the playing field so that we, the senior population, have a chance to enjoy the fruits of our labor as we age. Thank you for your time and consideration.

STATEMENT
OF

ANN HERSOM
ACTON, MAINE

BEFORE THE
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

HEARING ON
CROSS-BORDER FRAUD
JUNE 14, 2001

My name is Ann Hersom. I appreciate this opportunity to address the distinguished members of the US Senate Permanent Subcommittee on Investigations regarding how my family was victimized by cross-border telemarketing fraud.

I am a 62 year old business woman and my 80 year old husband is retired. I have owned a small gift shop in downtown Sanford since 1994. My husband, Mr. Leon Hersom, was initially contacted sometime in 1997 through mail solicitations offering chances in foreign lotteries. I really did not pay much attention to what my husband was doing until 1998. I suffered an injury to my back in January of 1998 and had surgery in August of 1998. Since 1999 I have remained at home caring for my husband and 20 month old grandson. My son took over the day-to-day operations of my business. Since remaining at home I became aware that my husband was receiving numerous telephone calls during the day from telemarketers. I could not help but notice, the calls would started at 7:00 a.m. and continue until 9:00 p.m. at night. It was only then that I discovered that my husband had been sending money to Canadian telemarketers and sweepstakes drawing in the United States in the belief that he had won a lottery and needed to pay the "taxes" on the winnings. While I have no exact way of knowing how much my husband actually sent these people I believe our financial loss is between $15,000 and $20,000. From the records I could piece together I know that my husband wired via Western Union $2,700 dollars to specifically pay for the "taxes" on his winnings. In one instance he wired $1500 which was all of our income for the month.

I am sure you can understand how hard it is to manage when all of your money for the month has been thrown away. After I became aware of this situation I reviewed our checkbook and credit cards and found numerous checks and credit card charges made out to these people for $300 to $500 at a time. It was so bad that I had to take the checkbook and credit cards away from him.

I then discovered that my husband was obtaining cash and mailing that directly to Canada. When he was unable to obtain cash he would take his medical insurance reimbursement checks form the mail sign them, cash them and send the money to people in Canada and the United States. My husband would receive approximately 20 sweepstakes mailings on Monday and 5 - 10 sweepstakes mailings the other days of the week. These sweepstakes mailings would be from all over the world telling my husband that he had won the lottery and just had to pay for "processing fees." Many of the mailings have "catchy" slogans - "you are a winner of one million dollars and all you have to do is pay $19.95."

Many of the tactics from the mailings and telemarketers are also - "this is a one time only offer, you can only do this today", "you mean you don't want to win all this money" and "you could really use this money couldn't you?" These tactics prey on people's minds.

Senior citizens need to be made aware that you don't have to pay to win something.

We have started to receive telephone calls at our home from people with foreign accents, the telephone operator will call and say "you have an international collect call - will you accept?" And before I can say "no" someone with a foreign accent will say "pick up the phone Mr. Hersom", say "yes, Mr. Hersom." This has been very, very frustrating - I try to always be the one to answer the phone.

My husband still insists that he will win "the lottery" and even opened a postal box, unbeknownst to me in order to continue to receive "lottery" information. I don't think I can fully explain how surprising and frustrating this experience has been. My husband was a businessman for many years, who owned his own lumber business. My husband was always very intelligent and was good at making smart business decisions. He is not the type of man that I would have imagined could fall for a con-artist. However, my husband is not in good health. He suffers from congestive heart failure and is on oxygen 24 hours per day. With the onset of his illness it also appeared as though he became exceedingly concerned about having enough money to pay for his ongoing medical treatment as well as just to meet normal living expenses. I believe that as people get older and they can no longer work to support themselves they become fearful as to how they will be able to manage.

Senior citizens are afraid that their money will not last as long as they will: this is a deep-seated fear that younger people – who are able to work and make more money if they need to – do not fully understand. I think these telemarketers prey on this fear to the point that people respond to an enticement that under normal conditions would not make sense. Even now I still monitor the mail and phone calls to ensure that telemarketers are not getting to him.

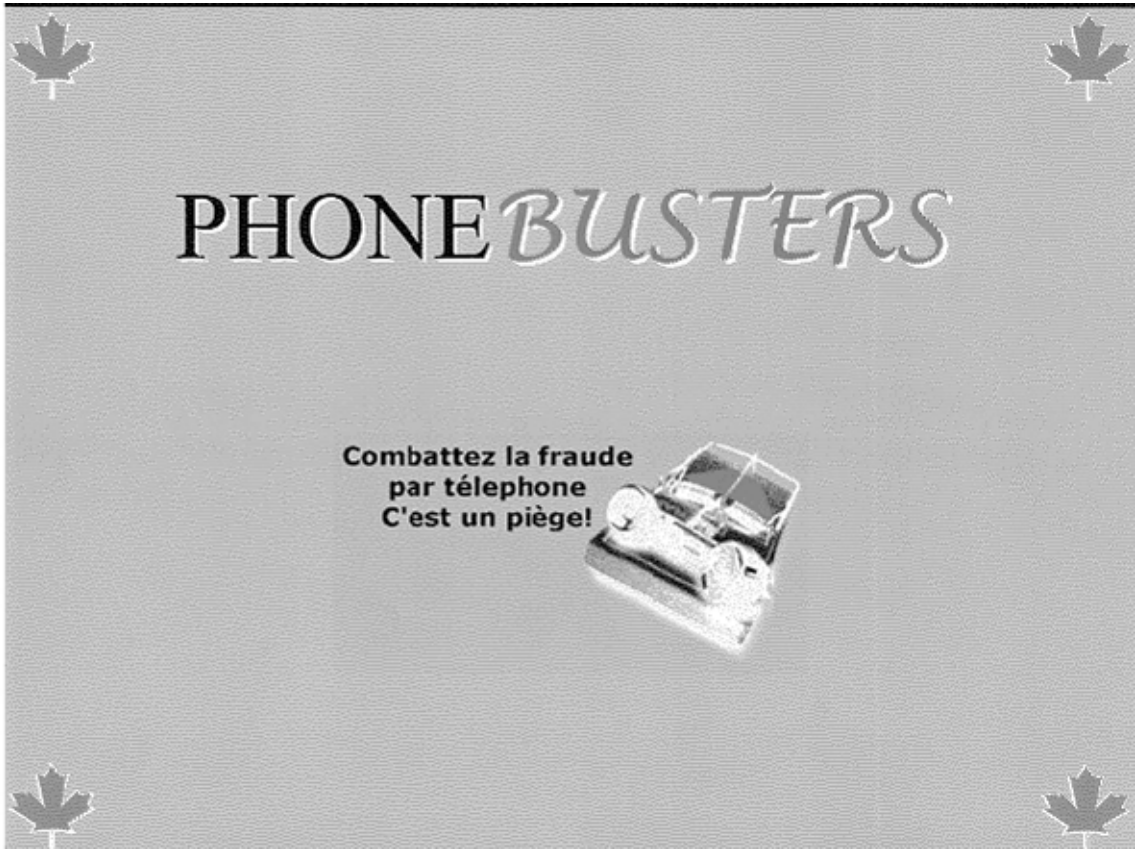
This entire experience has been extremely hard on our marriage. At one point, in desperation, I told him I would leave him if he didn't stop. Even today, after everything we have been through - he still believes he can win "the lottery." Or that he already has "won" and merely has to pay a "processing fee."

I hope my remarks today may alert potential victims to this type of fraud. More importantly I hope that spouses, brothers or sisters and the children of the elderly pay attention to their loved ones and become involved in their lives in order to prevent some telemarketer from defrauding them. Many senior citizens are alone and fearful. They are easy targets for telemarketers whose scripted calls appear to offer friendship but only play on senior citizens' fears in order to steal their life's savings.

I want to say today to everyone that "if it sounds too good to be true, it is." I also want to say that senior citizens should not be embarrassed to talk about this with their families. Their families can help them to understand that this is not their fault, they are being preyed upon by these telemarketers and what is needed is for more people to know about this so that it can be prevented in the future.

POWERPOINT PRESENTATION
OF

DETECTIVE STAFF SERGEANT BARRY F. ELLIOT
Ontario Provincial Police
Anti-Rackets Section
[Creator/Coordinator of Phonebusters & Seniorbusters]
North Bay, Ontario, Canada


PHONEBUSTERS
Combattez la fraude
par télephone
C'est un piège!

Funding Partners

- Ontario Provincial Police – Anti-Rackets (National Call Centre Co-Ordinator)
- Royal Canadian Mounted Police
- Industry Canada Competition Bureau
- Ministry of Consumer and Business Services (Ontario)
- Visa Canada
- MasterCard Canada

As of June 7, 2001

Associate Partners

- Toronto Strategic Partnership
- RCMP Project Colt – Montreal
- RCMP Project Emptor - Vancouver
- Better Business Bureaus (CDN & USA)
- Canadian Couriers Association
- Canadian Bankers Association (CBA)
- American Association of Retired Persons (AARP)
- Canadian Association of Retired Persons (CARP)
- Federated Women's Institutes of Ontario
- ABC's of Fraud Programs
- Federal Trade Commission (USA)
- The Co-operators
- Ontario Federation of Agriculture
- Association Of Canadian Clubs/Association Des Cercles Canadiens
- OPP Veterans Association

As of June 7, 2001

Since 1995

14,510 Canadians reported to PHONEBUSTERS a total dollar loss of $50.9 million dollars

As of June 7, 2001

Victims

over 60 years old

represent

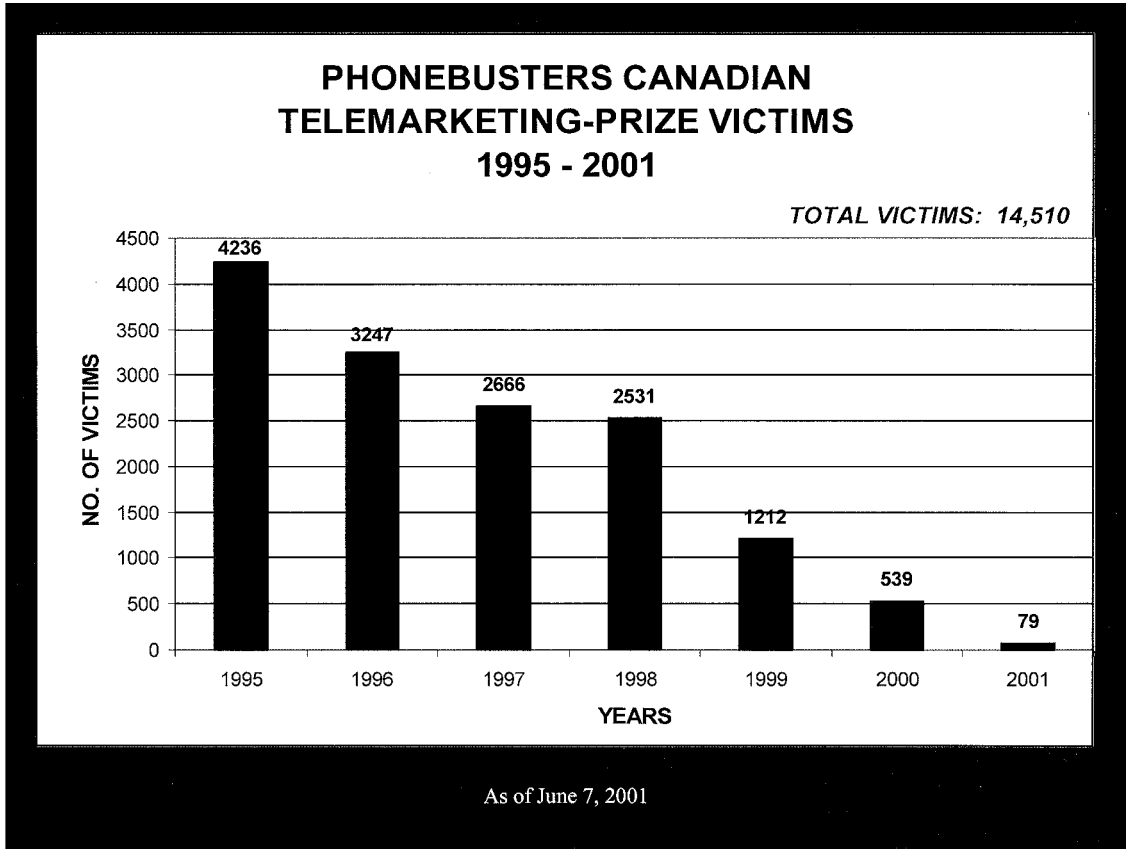
83%

of total dollar loss.

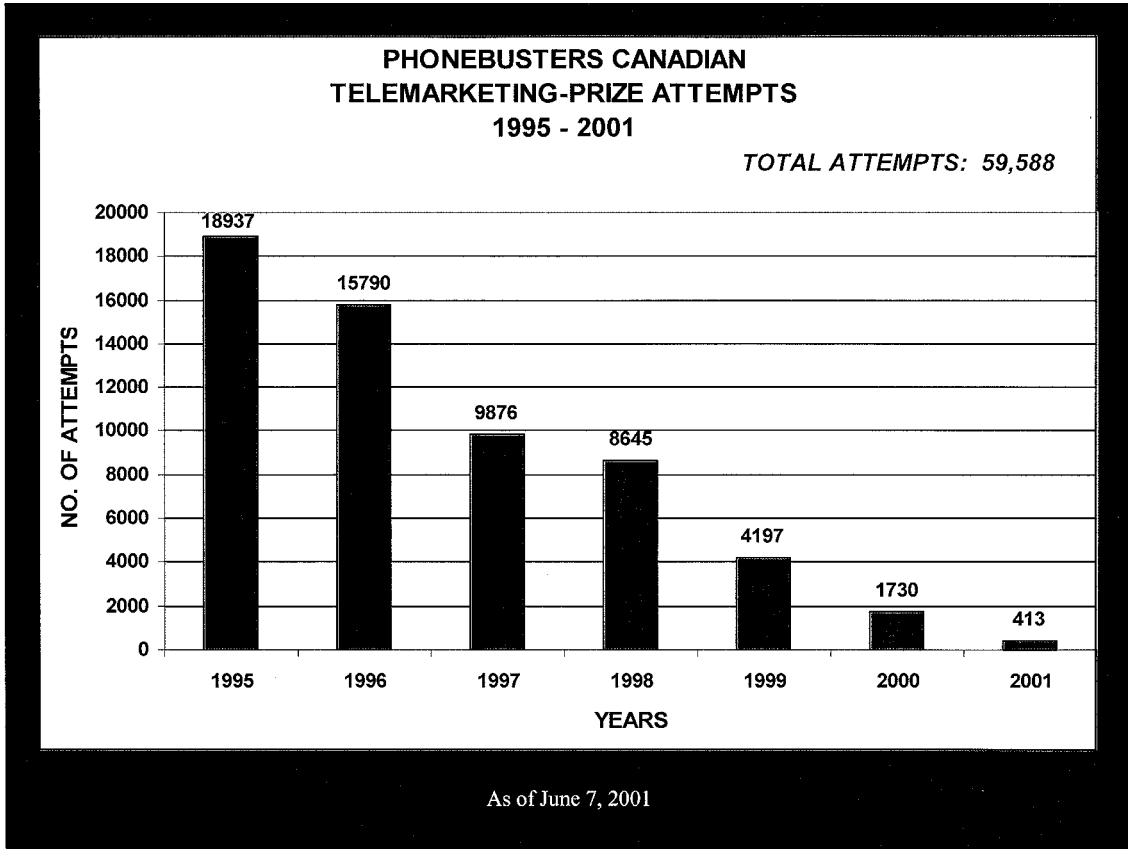
As of June 7, 2001

Canadian Statistics

As of June 7, 2001



As of June 7, 2001



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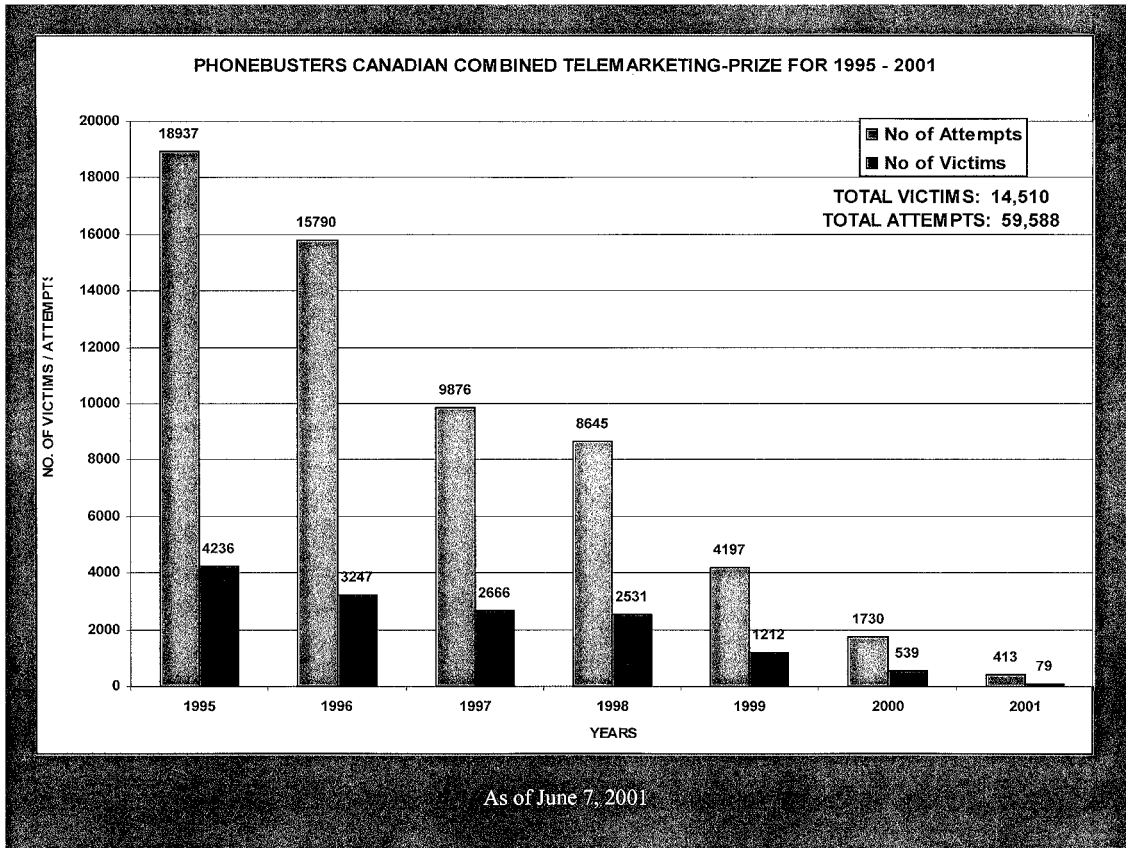
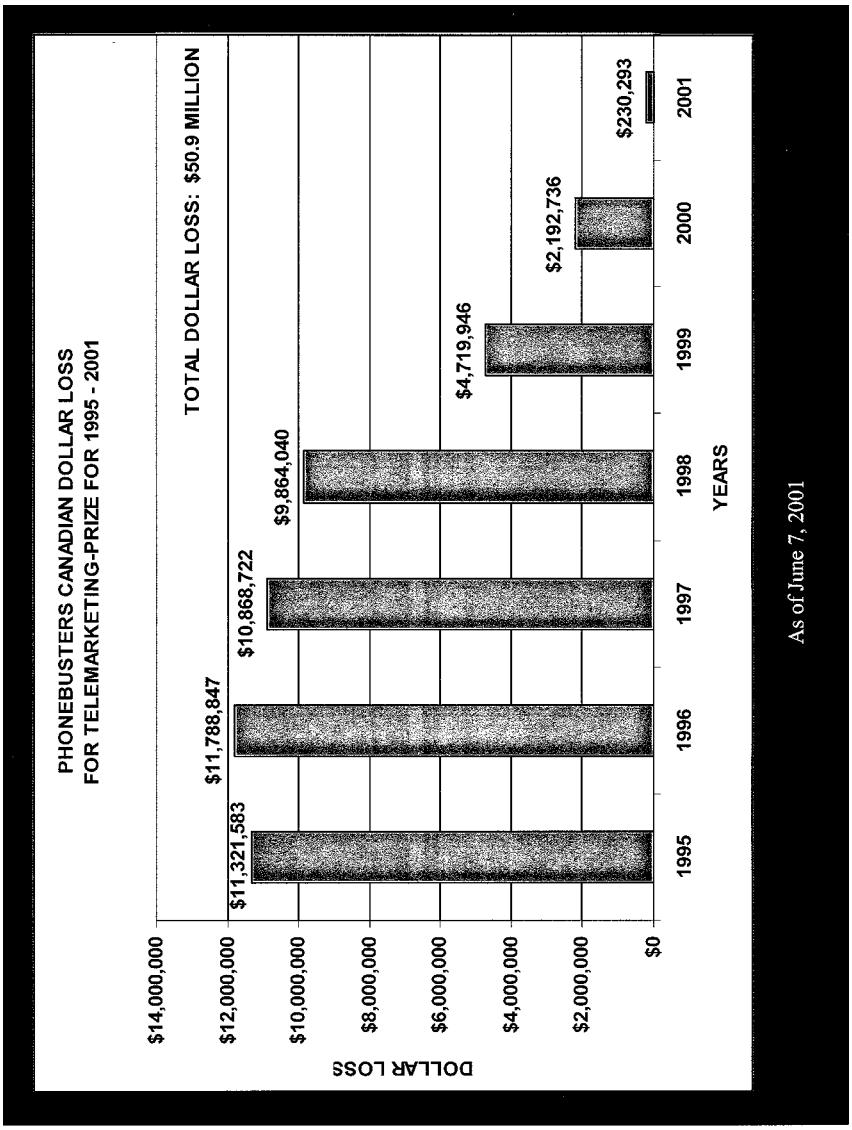


As of June 7, 2001


PHONEBUSTERS CANADIAN DOLLAR LOSS
FOR TELEMARKETING-PRIZE FOR 1995 - 2001
TOTAL DOLLAR LOSS: $50.9 MILLION
DOLLAR LOSS
$14,000,000
$12,000,000
$10,000,000
$8,000,000
$6,000,000
$4,000,000
$2,000,000
$0
$11,321,583
$11,788,847
$10,868,722
$9,864,040
$4,719,946
$2,192,736
$230,293
1995
1996
1997
1998
1999
2000
2001
YEARS
As of June 7, 2001

Referral's to Phonebusters

YEAR	REFERRED BY PROJECT COLT	REFERRED BY RCMP
1998	609	1132
1999	42	1331
2000	458	640
2001	492	245
TOTALS:	**1601**	**3348**

N.B. 48% were referred by Project Colt

RCMP Referral Percentage for 1998 to 2001

Total Canadian Victims and Attempts	=	19320
Total number of referral's by RCMP	=	3348
Percentage of referral's by RCMP	=	5.8%

The RCMP as a whole represent approximately 20% of the total police agencies

As of June 7, 2001

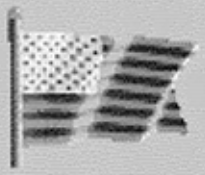
Testimony

June 1, 2001

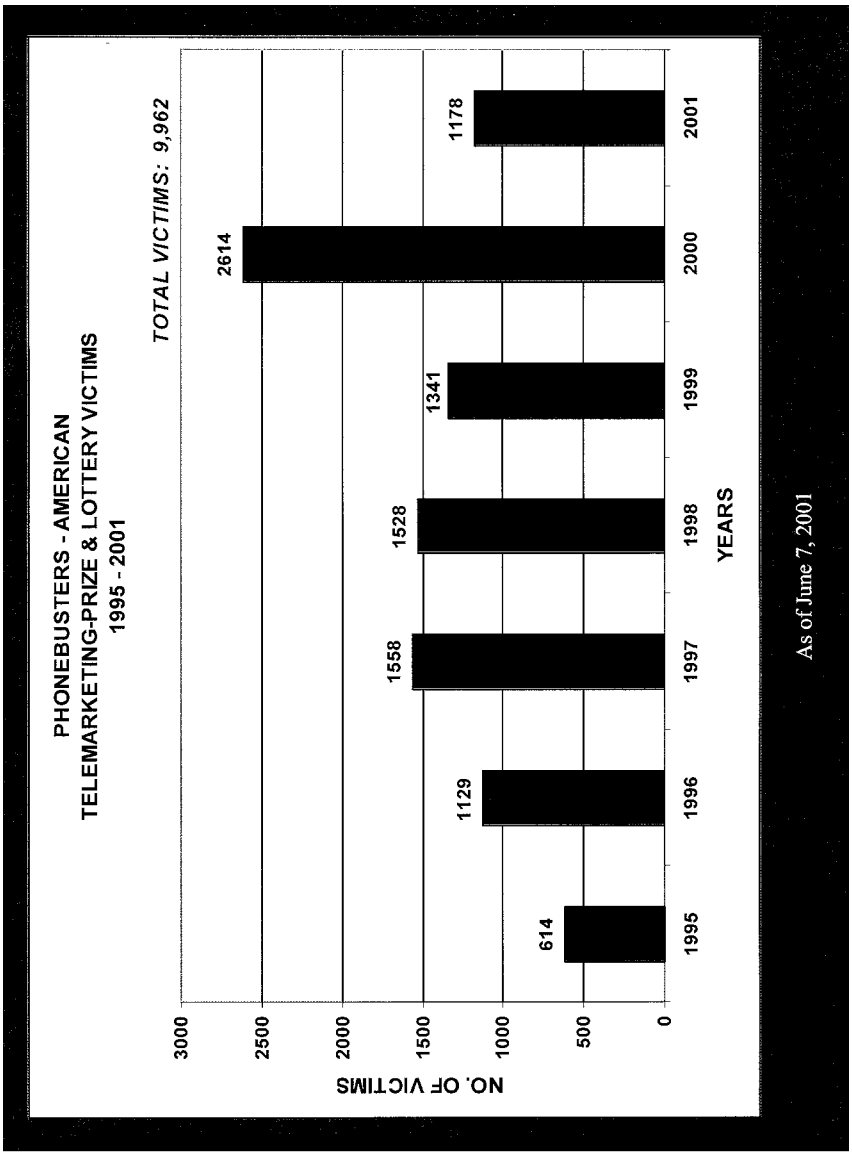
Phonebusters received a complaint from the RCMP Commercial Crime Unit who had been contacted by a couple in Tennessee. The couple had been contacted by someone claiming to be from the RCMP by the name of Sgt Ryan Neil, badge #76235. He said he was working on an investigation where contest winnings were intercepted by computer hackers and sent to a Swiss bank. He claimed the case had been solved and that he was just notifying the persons involved. The couple had apparently won a prize of 1.3 million dollars. The "officer" then notified the couple that they would be contacted by someone from the Federal Tax Bureau of Canada. A Richard Levesque called within an hour and gave the couple a claim number and informed them that a fee of $3,250.00 was required to be paid up front. Money was to be sent by Western Union payable to Lewis Brown at 800 Maison Neuv, Montreal, Quebec Canada. The fee was described as an insurance coverage to have the certified cheque hand delivered by a courier service. No money was sent.

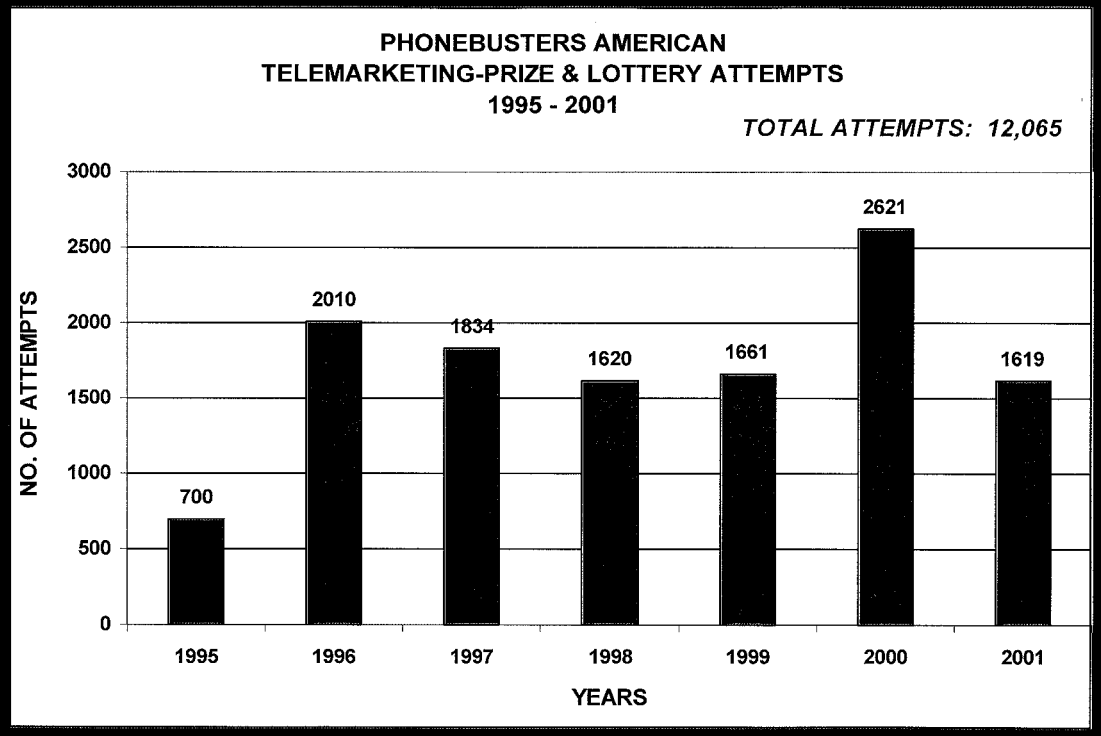
As of June 7, 2001

American Statistics

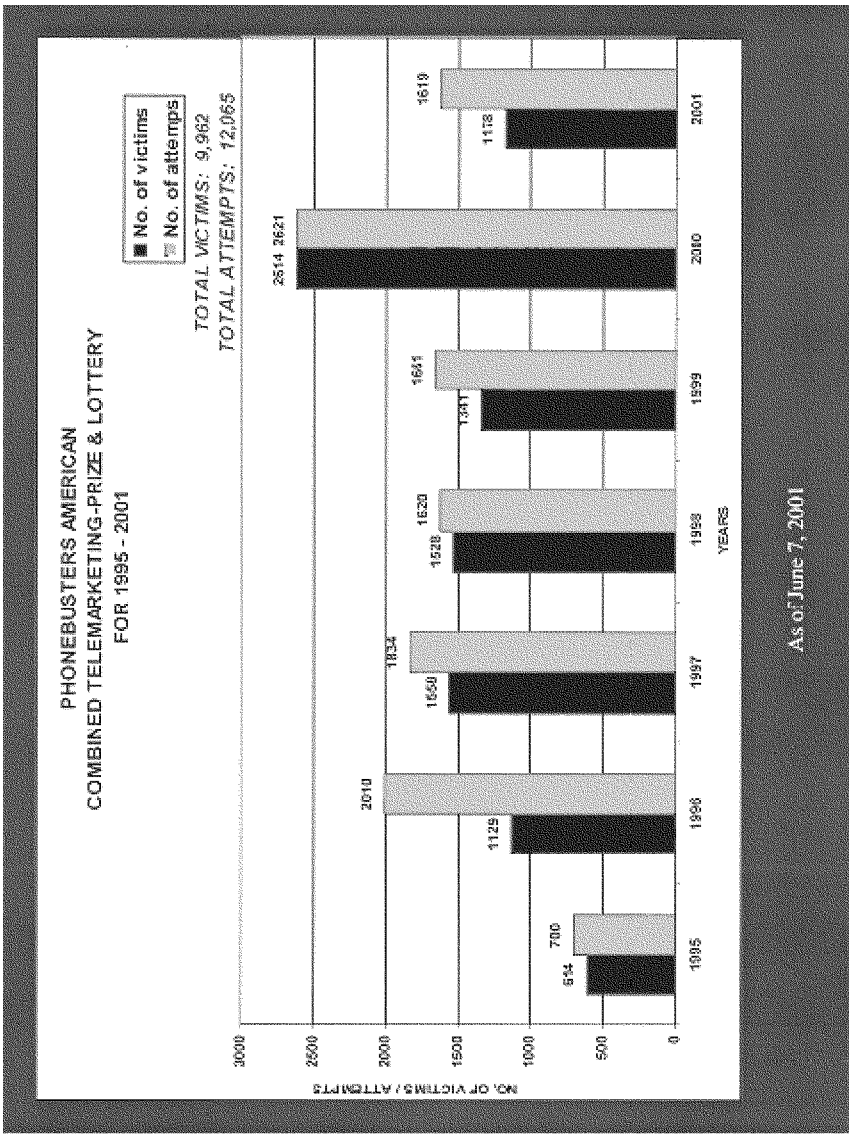


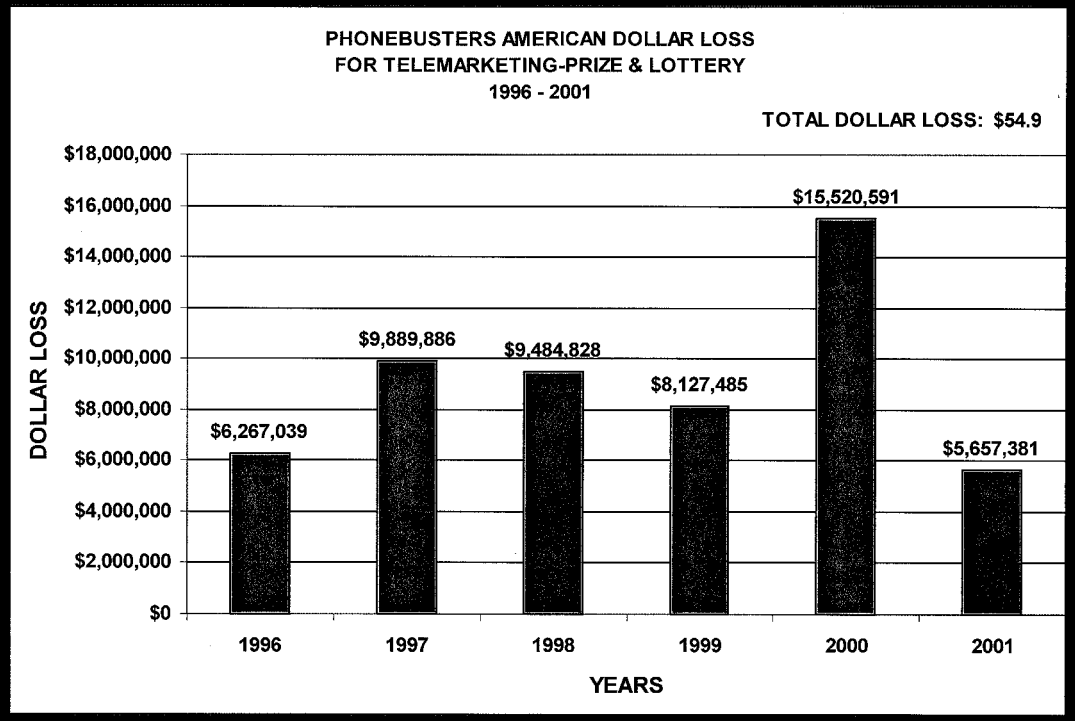
As of June 7, 2001


PHONEBUSTERS - AMERICAN
TELEMARKETING-PRIZE & LOTTERY VICTIMS
1995 - 2001
TOTAL VICTIMS: 9,962
NO. OF VICTIMS
3000
2500
2000
1500
1000
500
0
614
1129
1558
1528
1341
2614
1178
1995
1996
1997
1998
1999
2000
2001
YEARS
As of June 7, 2001

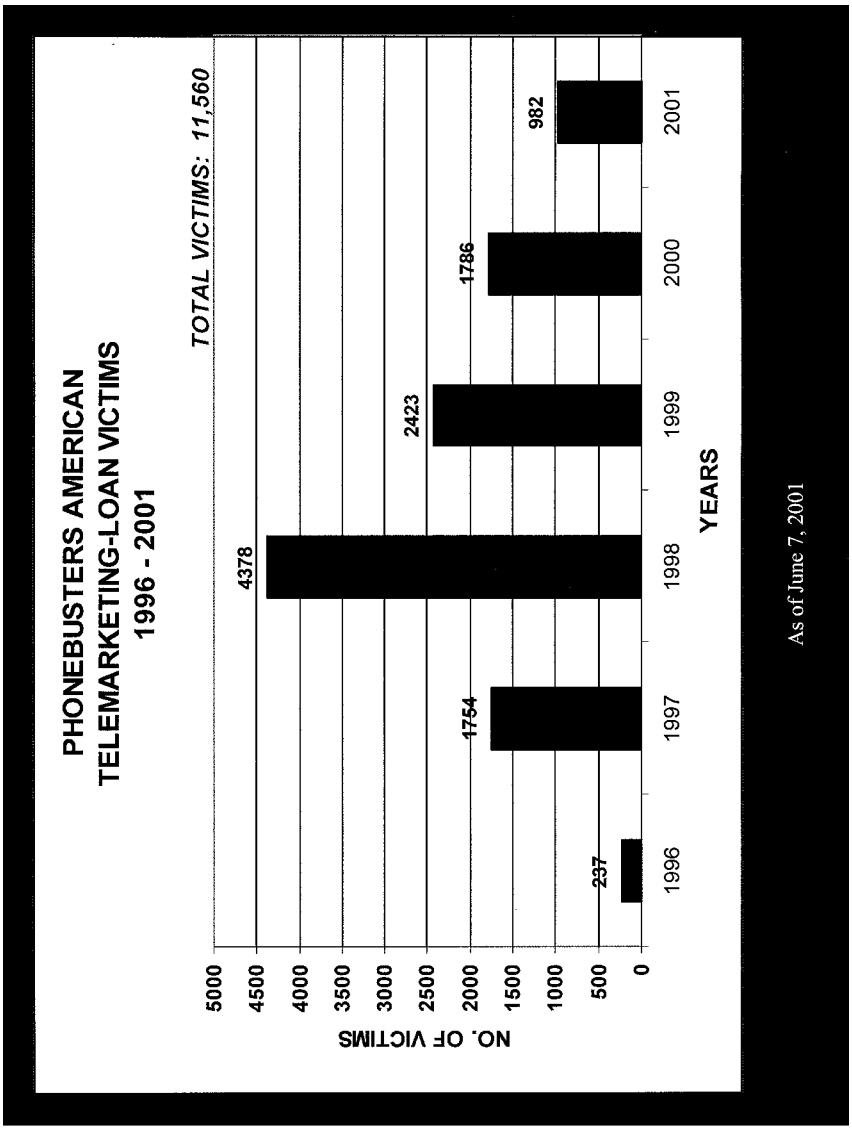


As of June 7, 2001

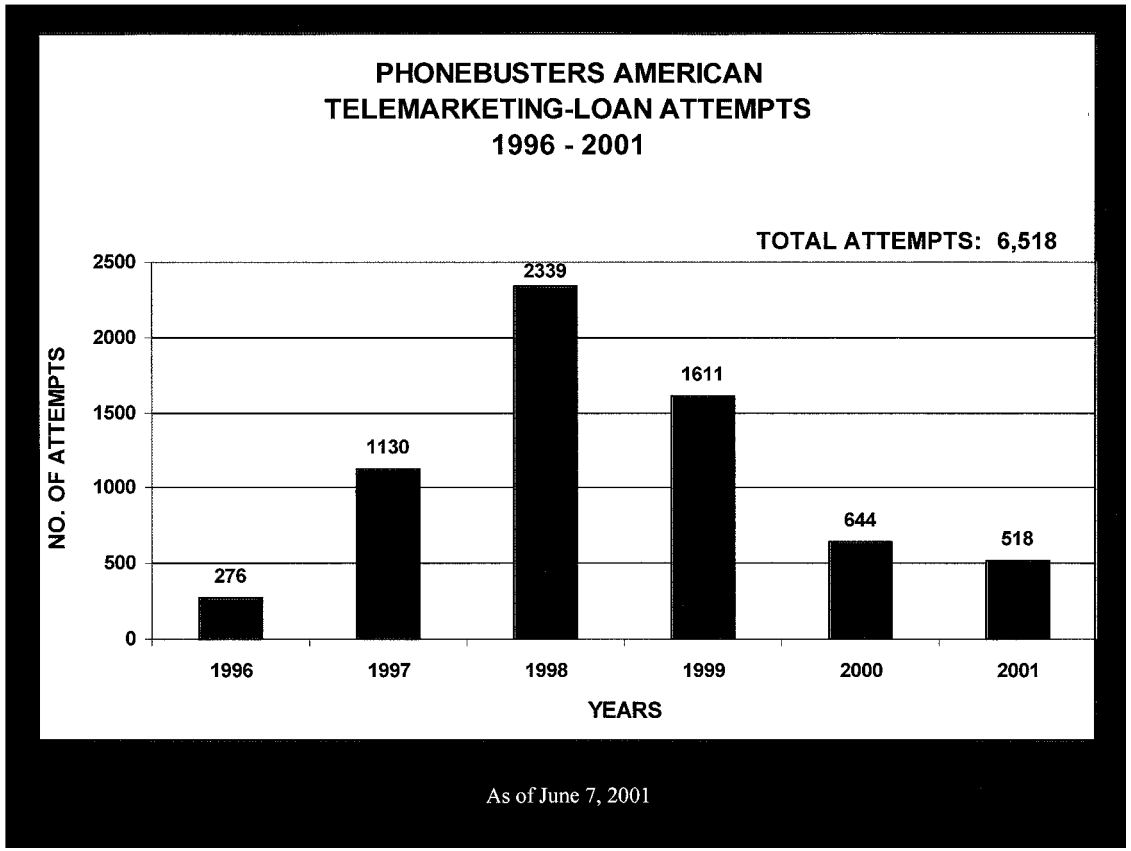

PHONEBUSTERS AMERICAN
COMBINED TELEMARKETING-PRIZE & LOTTERY
FOR 1995 - 2001
No. of victims
No. of attemps
TOTAL VICTIMS: 9,962
TOTAL ATTEMPTS: 12,065
NO. OF VICTIMS / ATTEMPTS
3000
2500
2000
1500
1000
500
0
654
780
1129
2010
1550
1834
1528
1620
1341
1641
2614
2621
1178
1619
1995
1996
1997
1998
1999
2000
2001
YEARS
As of June 7, 2001



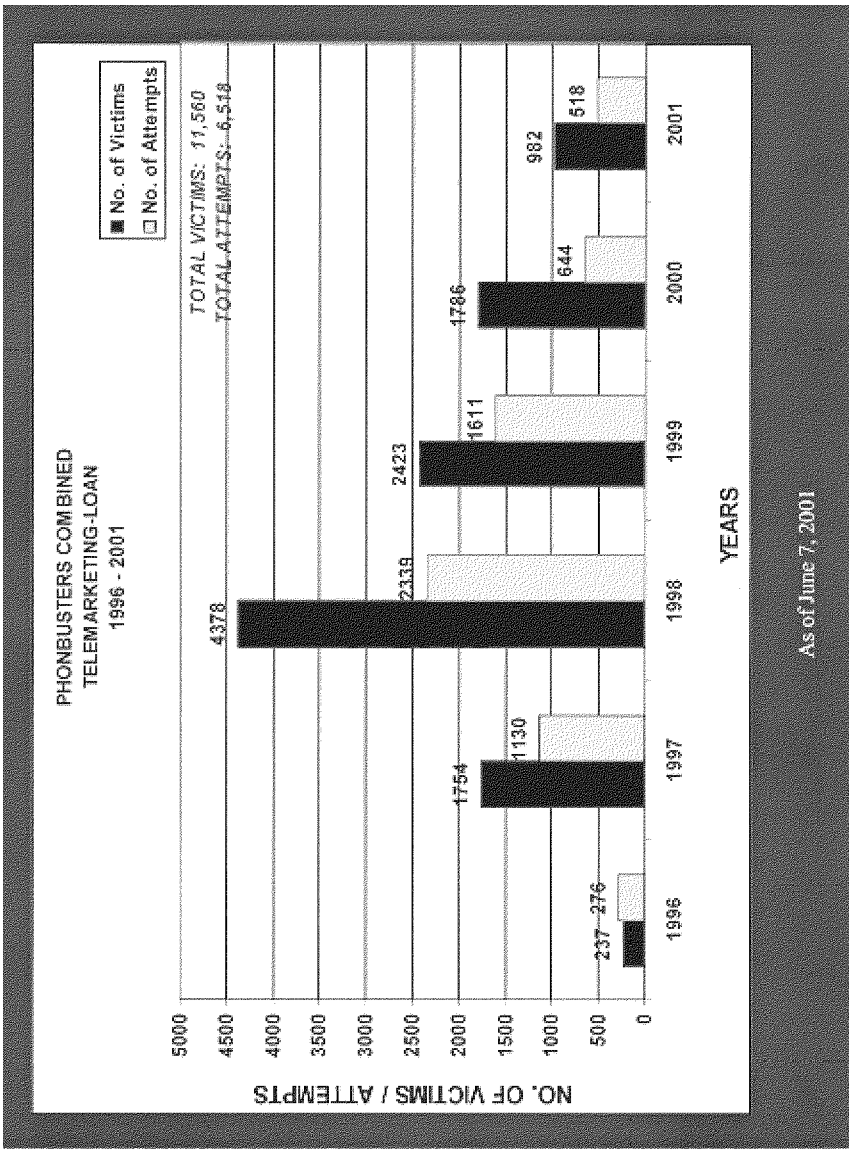
As of June 7, 2001

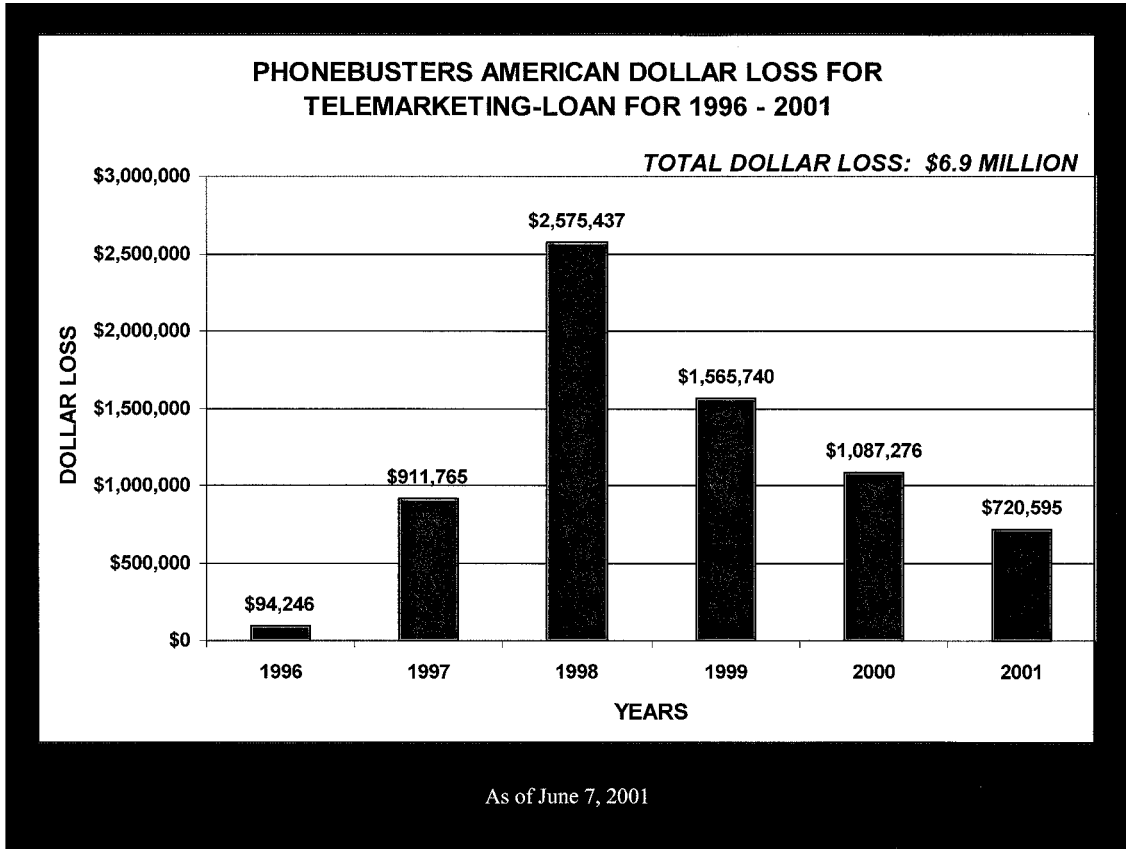


As of June 7, 2001

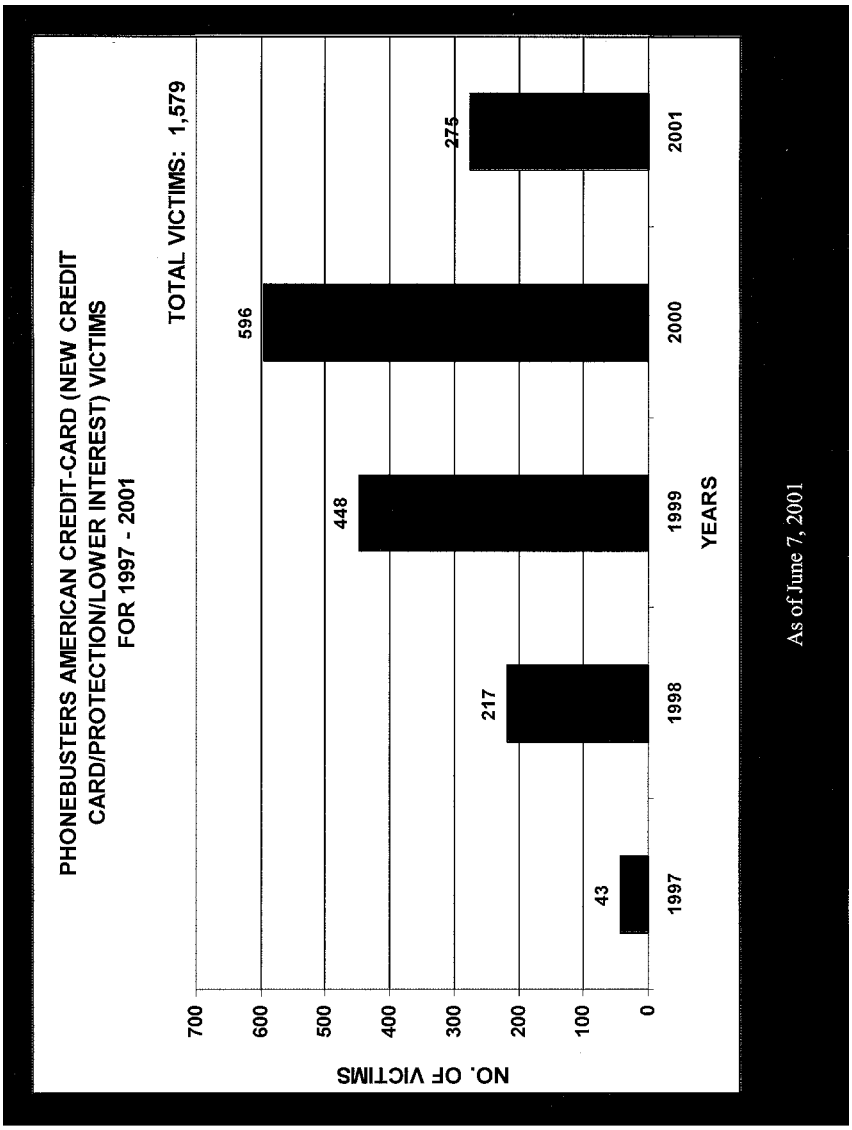


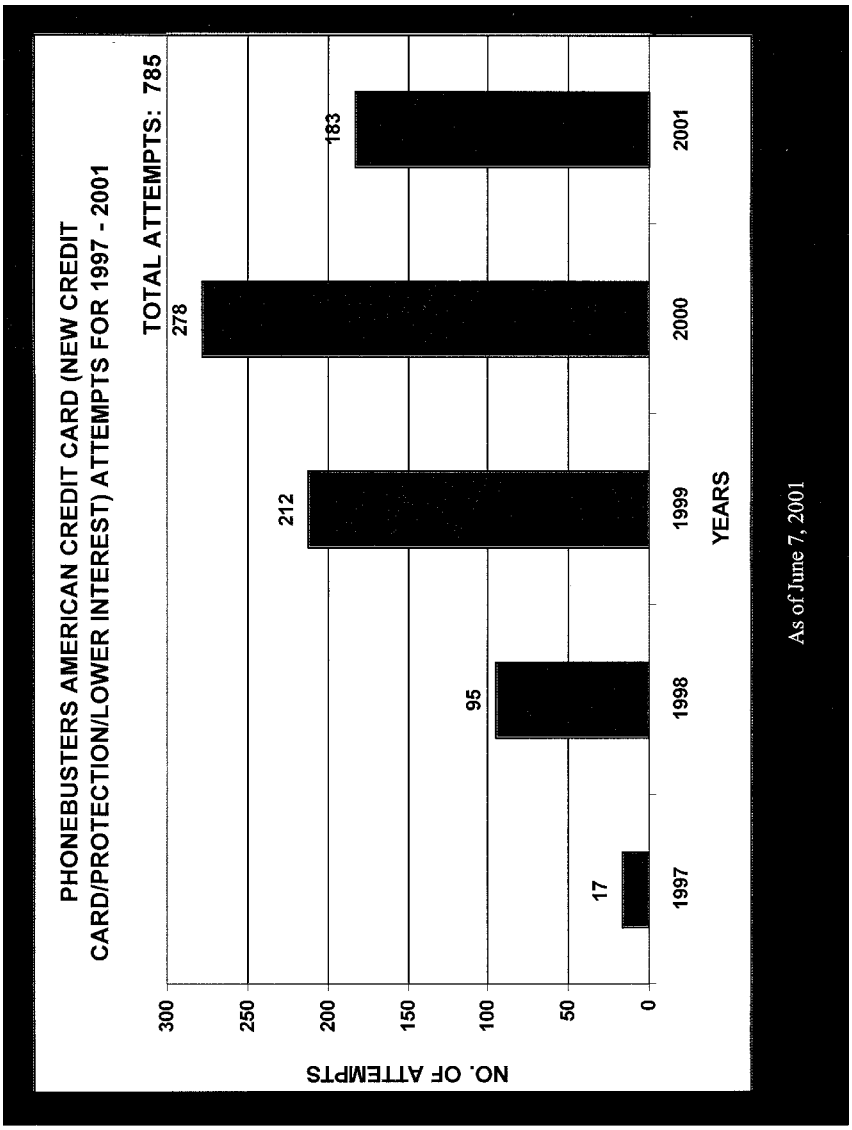
As of June 7, 2001

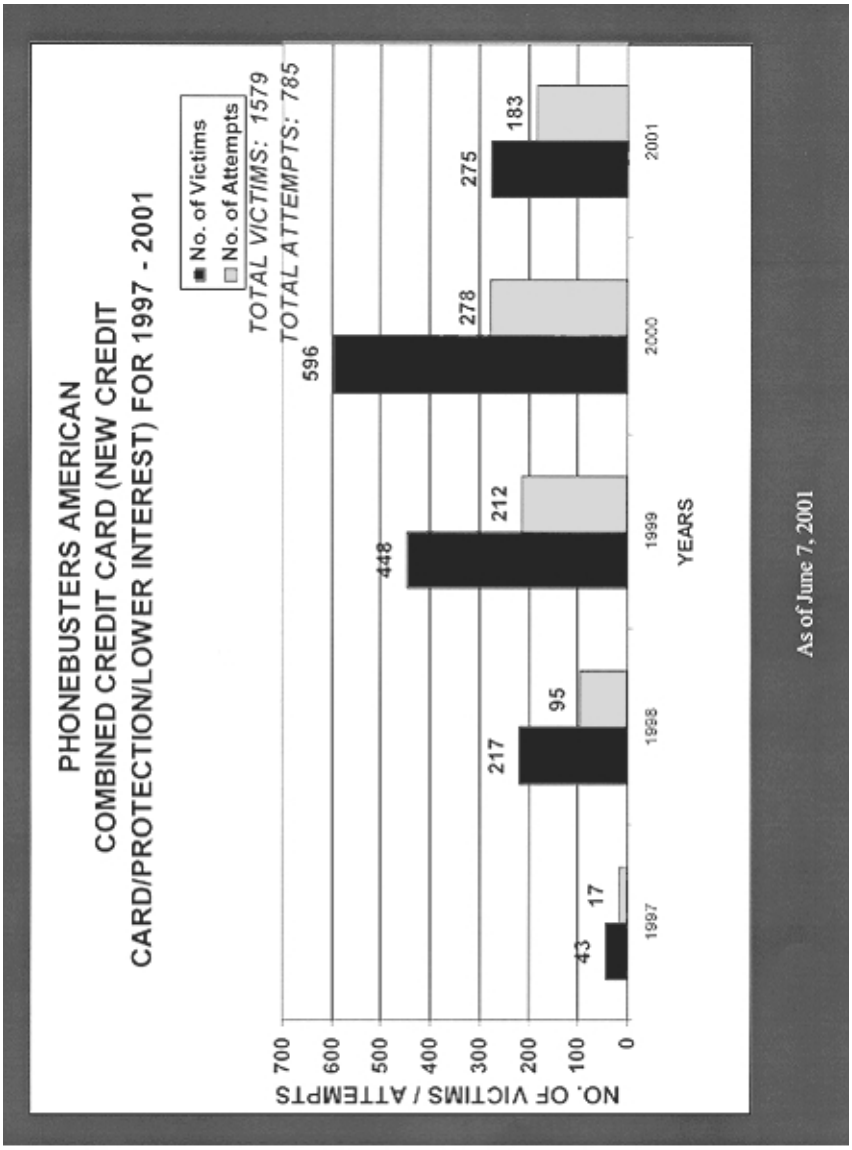

PHONBUSTERS COMBINED
TELEMARKETING-LOAN
1996 - 2001
No. of Victims
No. of Attempts
TOTAL VICTIMS: 11,560
TOTAL ATTEMPTS: 6,518
NO. OF VICTIMS / ATTEMPTS
5000
4500
4000
3500
3000
2500
2000
1500
1000
500
0
237
276
1754
1130
4378
2339
2423
1611
1786
644
982
518
1996
1997
1998
1999
2000
2001
YEARS
As of June 7, 2001

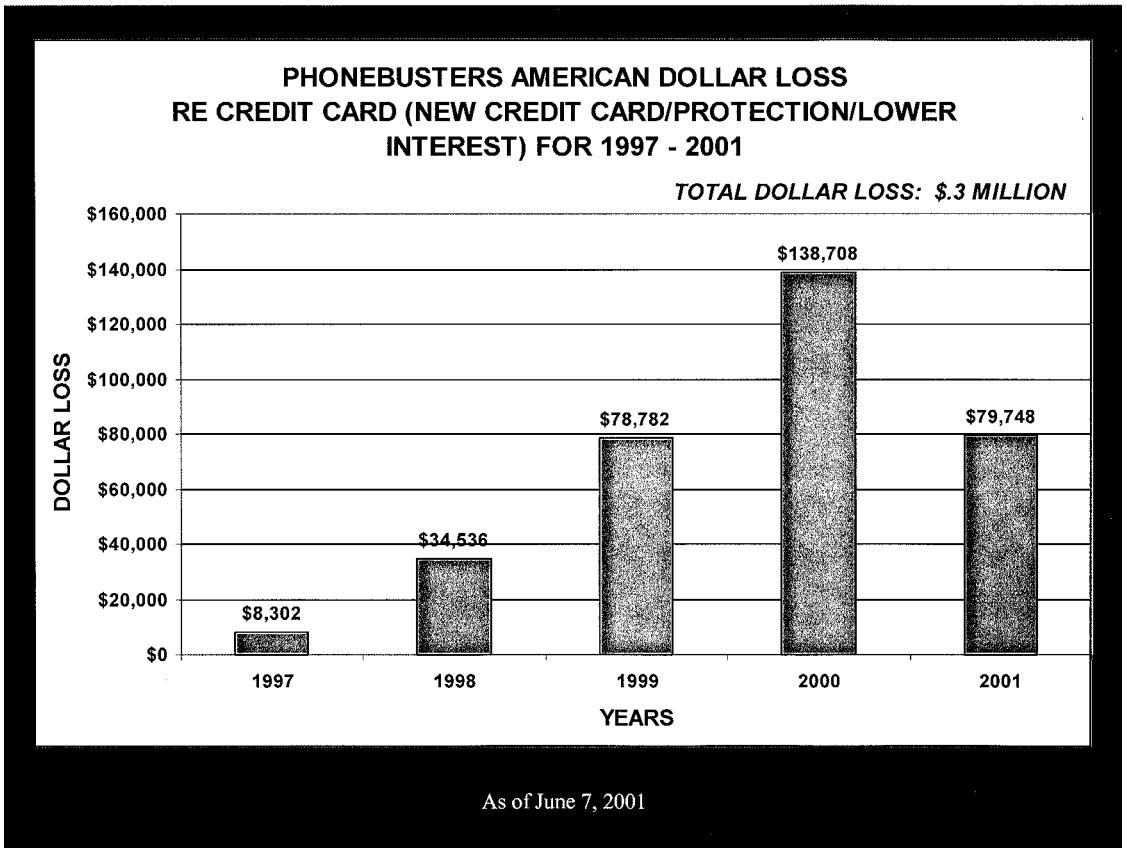


As of June 7, 2001

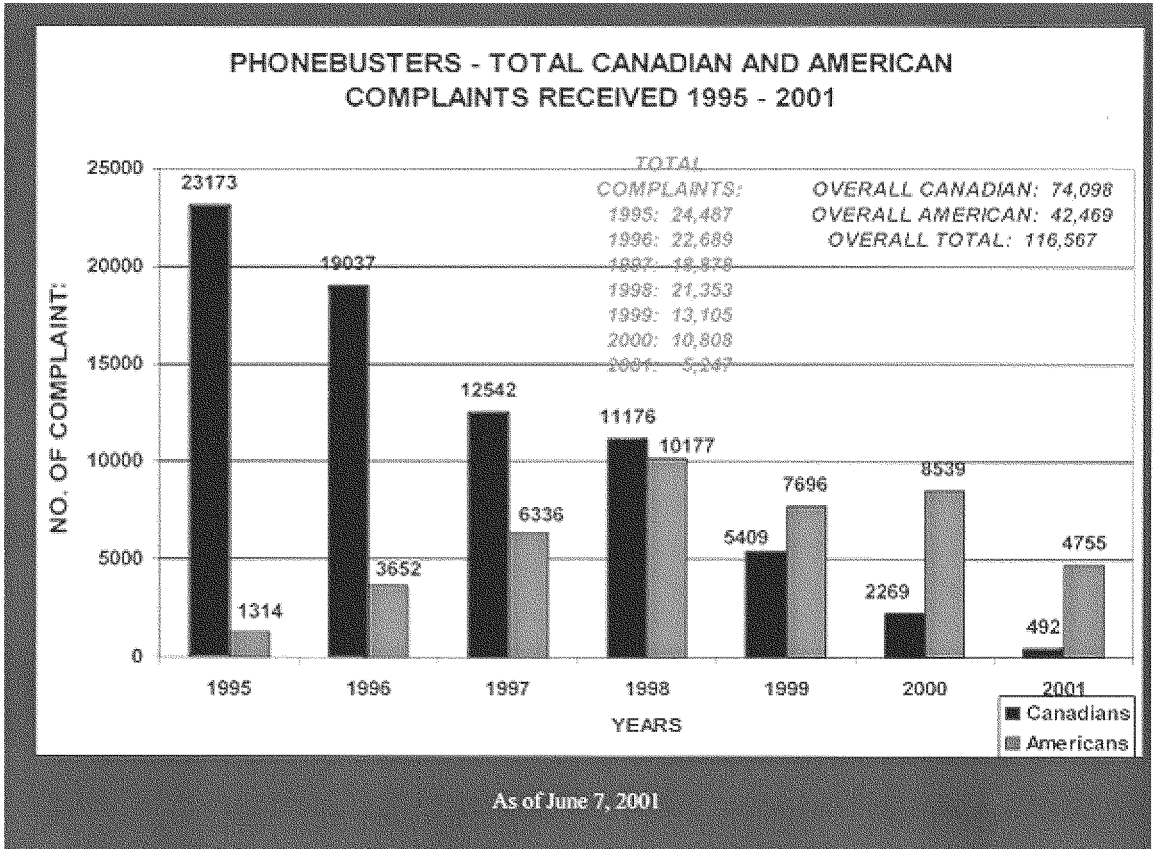

PHONEBUSTERS AMERICAN CREDIT-CARD (NEW CREDIT CARD/PROTECTION/LOWER INTEREST) VICTIMS
FOR 1997 - 2001
TOTAL VICTIMS: 1,579
NO. OF VICTIMS
700
600
500
400
300
200
100
0
43
217
448
596
275
1997
1998
1999
2000
2001
YEARS
As of June 7, 2001


PHONEBUSTERS AMERICAN CREDIT CARD (NEW CREDIT CARD/PROTECTION/LOWER INTEREST) ATTEMPTS FOR 1997 - 2001
TOTAL ATTEMPTS: 785
NO. OF ATTEMPTS
300
250
200
150
100
50
0
17
95
212
278
183
1997
1998
1999
2000
2001
YEARS
As of June 7, 2001


PHONEBUSTERS AMERICAN
COMBINED CREDIT CARD (NEW CREDIT
CARD/PROTECTION/LOWER INTEREST) FOR 1997 - 2001
No. of Victims
No. of Attempts
TOTAL VICTIMS: 1579
TOTAL ATTEMPTS: 785
NO. OF VICTIMS / ATTEMPTS
700
600
500
400
300
200
100
0
43
17
217
95
448
212
596
278
275
183
1997
1998
1999
2000
2001
YEARS
As of June 7, 2001



As of June 7, 2001



As of June 7, 2001

Complaints By Country

Algeria	1	Anguilla	1	Antigua & Barbuda	1
Argentina	3	Aruba	2	Australia	63
Azerbaijan	1	Bahamas	2	Bahrain	3
Bangladesh	10	Barbados	1	Belgium	4
Bermuda	5	Bolivia	1	Botswana	9
Brazil	25	Brunei Darussalam	13	Bulgaria	4
Cambodia	2	Cameroon	3	Canada	77701
Cayman Islands	3	China	1	Colombia	3
Costa Rica	4	Ivory Coast	1	Cuba	1
Czech Republic	1	Denmark	2	Dominican Republic	4
East Timor	1	Ecuador	2	Egypt	10
El Salvador	3	Eritrea	1	Estonia	1
Ethiopia	2	Finland	1	France	10
French Polynesia	1	Gambia	1	Germany	10
Ghana	9	Greece	5	Grenada	1
Guam	6	Guatemala	3	Guinea	1
Guyana	1	Haiti	4	Honduras	9
Hong Kong	19	Iceland	1	India	18
Indonesia	10	Iran	3	Ireland	2
Israel	3	Italy	6	Jamaica	11
Japan	24	Jordan	10	Kenya	6

As of June 7, 2001

Complaints By Country

Korea(North)	2	Korea(South)	5	Kuwait	15
Latvia	1	Lebanon	13	Lesotho	1
Libya	8	Madagascar	1	Malaysia	39
Mauritius	2	Mexico	5	Monaco	1
Morocco	1	Namibia	1	Nepal	5
Netherlands	6	New Zealand	80	Nicaragua	1
Nigeria	87	Northern Mariana Islands	1	Norway	1
Oman	2	Pakistan	21	Palau	1
Panama	1	Paraguay	1	Peru	1
Philippines	48	Puerto Rico	8	Qatar	4
Romania	1	Saint Kitts & Nevis	2	Saudi Arabia	116
Senegal	1	Singapore	30	Slovak Republic	1
Solomon Islands	17	South Africa	17	Spain	3
Sri Lanka	14	Swaziland	2	Sweden	4
Switzerland	2	Syria	3	Tanzania	6
Thailand	1	Trinidad & Tobago	1	Tunisia	2
Turkey	2	Uganda	3	Ukraine	1
United Arab Emirates	56	United Kingdom	160	United States	46975
Venezuela	20	Vietnam	1	Virgin Islands (US)	4
Western Sahara	1	Yemen	2	Zambia	2
Total	**126611**	As of June 7, 2001		**Total Countries**	**123**

Toronto Partnership Strategy

Partnership Includes:

- Toronto Police Service
- Ontario Provincial Police
- Ministry of Consumer and Business Services (MCBS)
- Industry Canada Competition Bureau
- Ontario Provincial Police – Phonebusters
- United States Federal Trade Commission (FTC)
- United States Postal Service

Created in February 2000 on a joint investigation by the U.S Postal Service

As of June 7, 2001

Toronto Partnership Statistics

- Approximately 36 boiler rooms have been shut down
- 61 charges have been laid in Ontario against approximately 61 individuals. Many more were arrested but not charged
- 10 Canadian accused were indicted on 51 counts of mail fraud by the Grand Jury in Harrisburg Pennsylvania
- Since February 2000, over $550,000 in Canadian funds has been seized for return to consumers

As of June 7, 2001

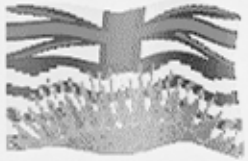
Project Emptor

Project Emptors' task force was formed in 1998 to systematically target lottery telemarketing fraud throughout the Vancouver area.

The task force uses both civil and criminal avenues of prosecution.

U.S Partners include:

- Federal Trade Commission
- US Attorney General Offices
- US Department of Justice: Office of Foreign Litigation
- US Department of Justice: AUSA Offices
- Federal Bureau of Investigation



Since January 2000 Project Emptor have conducted 9 searches, resulting in 6 arrests and recovering a total of 16 million dollars (CAD) in seized and frozen assets.

As of June 7, 2001

Project Colt

Project Colt, a division of the RCMP, was formed in 1998 to target fraudulent telemarketing firms operating in and around Montreal.

Since it's formation Project Colt has been responsible for:

- Closing 14 boiler rooms
- Charging 75 individuals
- Recovering 16 million dollars (CAD & USD) to victims

As of June 7, 2001

As of September 1996

Total Number of Media Interviews Conducted

Includes T.V, Radio and Newspaper

Canada1176

USA 132

As of June 7, 2001

BAFB9/99
Sweepstakes are fun and you could win.
But never pay to collect a prize. Make that
the one Sweepstakes rule you always follow.
If a Sweepstakes isn't Free,
Hang up...
and call us!
To get help or report fraud
call The National Fraud Hotline:
1 (888) 495-8501
PHONEBUSTERS
Reader's Digest
Industry Canada

The Top 2 Methods of getting on a fraudulent telemarketers list include:

As of June 7, 2001

THIRTY THOUSAND DOLLAR PRIZE NOTIFICATION

If you possess and return the Sweepstake grand prize winning entry and correctly answer a skill testing question, we will officially tell you that

YOU ARE OUR BIG $30,000.00 CASH WINNER MS HELENE PENNER

Carrousel of Ideas
[illegible]

International Bank
Vision Home Center
Montreal H3H 3C9

#	66890034395
DATE	[illegible]
$	30,000.00

PAY THE SUM OF $ 30000 00 cent

PAY TO THE ORDER OF

Ms Helene Penner
688 56th Ave E Apt 203
Vancouver BC XX87(L)
V5X 1R7

Fdir 270-215-213 CAA-13 034395

NON NEGOTIABLE

AUTHORIZED SIGNATURE

THIS IS A VERY IMPORTANT COMMUNICATION FROM THE "CARROUSEL OF IDEAS" MAIL ORDER HOUSE HEADQUARTERS:

Congratulations!... It's official. **YOU HAVE DEFINITELY WON A CASH PRIZE** in our Cash Prize Extravaganza Giveway. **CLAIM YOUR CHEQUE IMMEDIATELY, MS PENNER.** A cheque can only be made in your name if we receive your validation/order form duly completed **on time. DO DON'T WAIT ANY LONGER. RESPOND TODAY!** Your order will be greatly appreciated and we will make every effort necessary to make sure it meets your expectations.

Along all good news travels in pairs, it is with great pleasure that I am reminding you that you will certainly receive **a cheque issued to Ms Penner** in the amount of $10,000.00, like the section above, if you return the winning Sweepstake grand prize entry on time. You'll certainly agree with me that, with such a prize, it would be foolish of you to not take this important notice seriously! Please, do take a few minutes of your time to respond **Ms Penner!** If we look at our latest winners, it's very surprising to note that some of them didn't think that they could become major prize winners just by returning their validation/order form. Nevertheless, they decided that they couldn't take the chance to throw away a VALUABLE PRIZE and THEY RESPONDED. **We urge you to do the same, Ms Penner! Don't miss this second chance!**

IMPORTANT...READ IMMEDIATELY...IMPORTANT...READ IMMEDIATELY...IMPORTANT...READ IMMEDIATELY...

Our capacity to award hundreds of thousands of dollars in prizes and merchandise depends on winners like you, **Ms Penner**, ordering items in our catalog at the same time as they are claiming their prize. Take a look at our Carrousel of Ideas catalog full of innovative products and very useful household items to improve your personal comfort. See our **STAINLESS STEEL SPOON REST (C-356454) OFFER** on p.3. Pay **ONLY $9.99** for this exciting kitchen product! Get your **SET OF 12 SILK ROSES (C-276608)** on p.4. It makes an ideal Mother's Day gift and it is great to decorate your home or office! Get yours today at the **SUPER LOW PRICE OF ONLY $6.99 a set Ms Penner!** Discover the benefits of magnetic energy with our **MAGNETIC ARMBANDS (C-701508;C-701516)** on p.13. Have a beautiful table with our **FLORAL TABLECLOTHS (C-862003;C-862516;C-862023)** on p.16. Take advantage of our **AT SEEN ON TV CONTOUR LEG PILLOW™ OFFER (C-347898)** on p.24. Reduce eyestrain with our **ILLUMINATED READING MAGNIFIER (C-346825)** on the **ADDITIONAL SHEET.**

But that's not all... our Promotion Service informs us that you are also a **CONFIRMED PRIZE WINNER** in our V.I.P. III Pre-Confirmation where prizes of $15,000.00, $10,000.00, $1,000.00 and $400.00 CASH are at stake!

QUALIFY AS AN EARLY BIRD BY RESPONDING WITHIN 7 DAYS!

ATTENTION! If you do not return this document on time, it will mean that you will forfeit all rights to claim your prizes. **DON'T LET THIS HAPPEN, MS PENNER! RESPOND TODAY!**

REGISTRATION FORM

LIMIT 1 ENTRY PER HOUSEHOLD
MUST BE FILLED OUT COMPLETELY TO QUALIFY

NAME: _____ AGE: _____ M ❑ F ❑

WHICH OF THESE DO YOU USE?

❑ VISA ❑ MASTERCARD ❑ AMEX ❑ DISCOVER

SINGLE ❑
MARRIED ❑
C/LAW ❑

HOME PHONE #: (____) _____

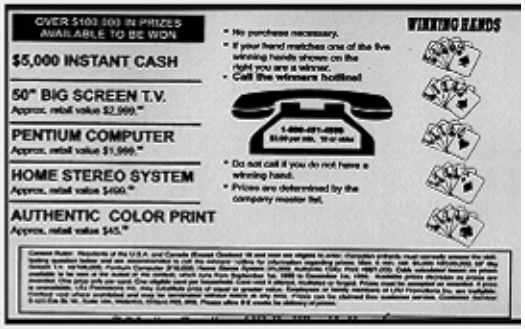
ADDRESS: _____

CITY/PROV./P.C.: _____

HOUSEHOLD INCOME: ❑ $25 – 35,000 ❑ $35 – 45,000 ❑ $45 - $65,000 ❑ OVER $65,000

I COMPLETED THIS FORM AT (SHOW NAME) _____

Forms may be used for promotional purposes



Scratch and Win tickets are being mailed to Americans as we speak and winners are to call a toll free number for information on how to acquire it. **For an up front fee.**

As of June 7, 2001

STOP PHONE FRAUD - IT'S A TRAP

TOTAL VIDEO'S DISTRIBUTED

6284

From August 1999 To June 2001

As of June 7, 2001

PHONEBUSTERS

VIDEO'S DISTRIBUTED

ONTARIO	=4372	ALGERIA	=1
BRITISH COLUMBIA	=302	AUSTRIA	=1
ALBERTA	=396	USA	=76
SASKATCHEWAN	=116		
MANITOBA	=176		
QUEBEC	=130		
NEW BRUNSWICK	=131		
NOVA SCOTIA	=110		
PEI	=12		
NEWFOUNDLAND	=42		
NWT, YUKON & NUNAVUT	=4		

As of June 7, 2001

SENIORBUSTERS:

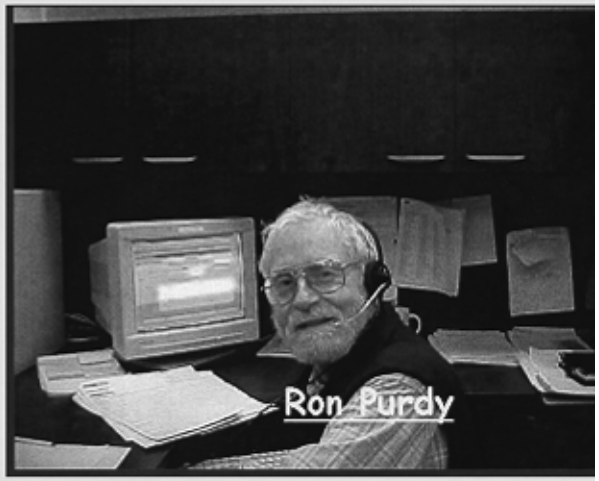
Follow up support for victims and targeted older adults

- Seniors helping seniors since 1997
- Peer support
- 55 active, dedicated volunteers

As of June 7, 2001

Since inception **SENIORBUSTERS**
volunteers have given –9220 hours of their time.
(383 days)

- **Calling**
- **Displays**
- **Presentation**
- **Education**
- **Awareness**



As of June 7, 2001

Stop Phone Fraud it is a Trap Videos

- **SENIORBUSTERS have promoted 827 videos across Canada. 412 videos @ Displays & 415 videos on support calls to seniors.**

As of June 7, 2001

HOW TO CONTACT US:

- Call toll free 1-888-495-8501
- Fax toll free 1-888-654-9426
- Email address: info@ phonebusters.com
- Web site: www.phonebusters.com
- Mail: Box 686, North Bay, ON P1B 8J8

STATEMENT OF
JACKIE DEGENOVA

Ohio Attorney General's Office
Chief, Consumer Protection Section

Before the
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Hearing on Cross-border Telemarketing Fraud
June 14, 2001

***

Good morning Chairman Levin and members of the Subcommittee. Thank you for this opportunity to speak with you today on behalf of Ohio Attorney General Betty D. Montgomery regarding the investigation and prosecution of cross-border fraud. I would especially like to thank the victim witnesses who testified today. Their commitment and effort to be here today and above all, their courage to speak out about the frauds perpetrated against them, serve as a reminder of exactly why we are all here today.

The stories told this morning by Mr. Hathaway, Ms. Hersom and Ms. Erb are simply remarkable, but unfortunately, not unique to the tens of thousands of Americans victimized each year. We know that violent crime has been on the decline in recent years, but that international economic crimes are dramatically increasing. We also know that those most often targeted are the elderly, whose life savings, retirement nest eggs or health care savings are stolen from them on a daily basis. The picture becomes even more grim with the understanding that as compelling as these stories are, only a small percentage of these economic frauds are reported each year.

Like our panel of witnesses this morning, the majority of victims we interview during investigations are not uneducated, reckless or feeble - minded folks who are carelessly throw away their hard-earned money. Their statements speak for themselves. We encounter victims like Mr. Hathaway, who are educated and hard working. Our most vulnerable populations are at risk as well to unscrupulous con artists who purchase

telemarketing victim lists. These cross-border con artists are capitalizing on the globalization of communication, technological advances and limitations of law enforcement in combating these crimes without geographical constraints.

What are the stumbling blocks to investigating and prosecuting cross-border telemarketing cases? It will come as no surprise to you that the obstacles are many, including the fact that many states have only civil jurisdiction over telemarketing cases, or choose not to prosecute the crimes in their states due to the complexity of these cases. Ohio is one of the few states which has specific legislation requiring telemarketers to register with the Attorney General's Office and which prohibits certain conduct. Even so, our cases are often stymied. Certainly, as well, there is a need for more funding and a stronger commitment by the Canadian government to combat telemarketing fraud.

Understanding, however that we can do little, if anything to change the flow of resources for Canadian law enforcement, my comments will focus on workable solutions we can implement within the borders of the United States. Five years ago there was the need for such white-collar crimes to be recognized as the predatory, life-altering crimes we know them to be today. Awareness of these crimes by law enforcement and the public is at a higher level than ever, yet adequate training and funding for law enforcement continues to be a problem. Combating cross-border fraud simply must be a priority; we are ultimately answerable to the victims of these horrendous crimes.

We believe improvements made in three key areas will facilitate investigation and prosecution of the criminals behind the cross-border economic crimes. First, the United States must follow through on its commitments to the Canadian authorities. Second, a reevaluation is necessary of the methods used to obtain information essential to a criminal case, and third, sufficient funds must be allocated for law enforcement to prosecute within our own borders and to assist in Canadian prosecutions. I will address each of these separately.

United States Commitments to Canadian Authorities

First, the United States must pledge and follow-through on its membership commitments made to the Canadian authorities on various task forces and its commitment to assist in Canadian prosecutions. In recent years, initiatives designed to specifically combat cross-border fraud between the United States and Canada have been created, such as Project Colt, Project Emptor, the Toronto Task Force and the Department of Justice's Joint Initiative on International Issues. The Project Colt task force consists of the six members from the Royal Canadian Mounted Police (RCMP), a provincial Attorney General, and a member each from the FBI, Customs and United States Postal Service. Project Colt's goal is to reduce, prevent and control fraudulent telemarketing operations in the Montreal area by utilizing strategies to intercept money sent by victims before it is received by the telemarketer. Nearly 400 boiler rooms have been identified in the Montreal area alone!

Project Emptor is a similar operation in the Vancouver area of British Columbia. It is made up of four members of the RCMP, an investigator from the British Columbia Attorney General's office and one FBI agent. Project Emptor has had positive results in civil cases and criminal cases involving the seizure and forfeiture of assets, concentrating on the theory that the forfeiture of a criminal's assets has the most significant deterrent effect on them. The Toronto Task Force has members of the Toronto Police Service, Ontario Ministry of Consumer and Commercial Relations, the Ontario Competition Bureau, Industry Canada and the United States Federal Trade Commission. The Ohio Attorney General's Office has forged excellent relationships with members of the Toronto Task Force and just this week has been become a named member of the task force.

While these initiatives have been excellent resources, the United States must be more diligent in its commitment of assistance by the various federal agencies. On both Project Colt and Project Emptor, the presence of federal agencies has been sporadic or nonexistent. If we are to be truly dedicated to eradicating the victimization of Americans by cross-border telemarketing schemes, it is critical for us to honor our commitments to resources and membership.

Prosecutors from our office have spent a great deal of time with the law enforcement and legal communities in Vancouver, Montreal and Toronto. It is apparent that the Canadians have a limited understanding of the structure of our federal and state legal systems and their seemingly incongruous laws. At the same time, United States prosecutors struggle to understand the foreign Canadian legal system in order to assist in their investigations and prosecutions. Full time membership by the Unites States designee on these projects could be an effective tool for sharpening the skills necessary to investigate and prosecute these cases. At a minimum, a true membership commitment on these task forces will help prosecutors on both sides of the border better understand the different regional approaches taken in combating telemarketing crimes.

In addition to the United States' membership commitments, we must remain vigilant in assisting Canadian authorities regarding the intricacies of our legal system. Perhaps dedicating and training a liaison position to respond to legal questions between the United States and Canada would prove useful toward prosecuting cases that otherwise remain dormant. A liaison could explain, for instance, Miranda rights, the right to appointed counsel or speedy trial rights. One idea is to fund the position similar to the position funded by the Department of Justice in the fight against computer crimes.

In Ohio, our most successful cross-border cases have been those in which we have acted in a support capacity for Canadian prosecutions. We assist in locating and identifying Ohio victims, follow up with obtaining victim interviews, witness statements and victim impact statements. We have even funded travel and expenses for experts and victims to travel to Canada for the prosecutions. We often hear that the targets of Canadian prosecutions do not face as severe of penalties in Canada as they would in the United States, but at least they are being prosecuted.

Evaluation of Methods Used to Obtain Evidentiary Information

The second recommendation is to reevaluate the required federal process for states to obtain information essential to a criminal investigation and prosecution. Currently in cross-border cases, states are completely

dependent on the federal government to assist in obtaining information. While one can recognize the need for our nation to speak with a consistent, unified voice regarding international cases, the obstacles placed before those states willing to prosecute are a deterrent to their success. The methods of extradition for example, make states too reliant upon the federal government. In addition, the current system of obtaining information from Canadian authorities that may be used as evidence, is the use of an MLAT request, or Mutual Legal Assistance Treaty. These are available only through the United States Department of Justice, Office of International Affairs. An MLAT (or other formal request) requires extensive paperwork, which will only be accepted in WordPerfect format before beginning the process of review by two government branches before final approval or denial. We have also encountered differing opinions from the Office of International Affairs regarding when an MLAT is needed for admissibility in court. Overall, the MLAT process takes a considerable amount of time and is quite intimidating.

Meanwhile, telemarketers are adapting their scams based upon the availability of new technology with pre-paid digital phones, laptops and personal digital assistants. We've seen the rapid increase of boiler rooms that are transient and fly by night operations. In the time it may take to obtain information through a formal MLAT, there is a substantial likelihood that today's telemarketing operations will have moved on to their next scam.

The Ohio Attorney General's Office has worked hard in establishing an excellent network with Canadian authorities. Currently, we have five Canadian telemarketers under indictment and arrest warrants have been issued. We anxiously await them to cross into United States borders! Our relationships have allowed us to obtain information on an informal basis by circumventing MLAT requests. The information can be used to develop cases but it is of no evidentiary value in court because of the manner in which it was obtained. Thus we still must obtain admissible evidence and prepare appropriate state charges against Canadian targets. For these reasons, we suggest an examination of workable, cooperative means to shorten the time it takes to obtain information through an MLAT or to develop new ways that states may obtain evidence that would be admissible in a court of law.

Allocate funds to assist in prosecutions

Finally, perhaps our best resource comes through funding. All white collar crimes, including telemarketing cases, are very document intensive. Suspects, witnesses and victims are often separated by literally thousands of miles. Direct funding for the states for witness travel to Canada for pre-trial matters and trial would go along way in support of foreign enforcement efforts. Funding to aid in case preparation, such as purchasing videoconferencing facilities to preserve the testimony of our elderly victims, would be helpful. In addition, some flexibility in the rules at the Department of Justice's Bureau of Criminal Assistance would enable the National Association of Attorneys General (NAAG) to earmark grant funds for witness travel. In conclusion, I would simply concur and reiterate the comments of General Sorrell regarding the states' perspective on funding issues.

In sum, we believe the three recommendations outlined, if implemented, will go far in assisting United States and Canadian prosecutions. I ask that you again consider the stories told by the victims. Our focus should be on the victims, their feelings of regret, shame and fear that their adult children will now see them only as a 'victim', no longer able to live independently, take care of their own finances or care for themselves.

As you consider what you have heard today from all the panels, I urge you to step into the shoes of an Ohio Attorney General investigator or prosecutor. Every week they have the unenviable task of sitting next to victims like Mr. Hathaway, faced with his loss of money and dignity, and attempt to explain why we can not get back his money, or that prosecution of the criminals is highly unlikely. As difficult as our task is after today to find a better approach to fighting cross-border fraud, it is not nearly as difficult or regrettable as that task.

Thank you for the opportunity to testify.

UNITED STATES POSTAL INSPECTION SERVICE

WRITTEN TESTIMONY OF

LAWRENCE E. MAXWELL
POSTAL INSPECTOR IN CHARGE

FRAUD, CHILD EXPLOITATION, AND
ASSET FORFEITURE DIVISION
U.S. POSTAL INSPECTION SERVICE

U.S. SENATE PERMANENT SUBCOMMITTEE
ON INVESTIGATIONS

HEARING ON CROSS-BORDER FRAUD

JUNE 14, 2001

Introduction

The U.S. Postal Inspection Service, the Nation's oldest federal law enforcement agency, greatly appreciates the opportunity to present testimony to the Permanent Subcommittee's Hearing on Cross-Border Fraud. We are grateful for the many past efforts of the subcommittee, under the leadership of Senator Collins and Senator Levin in the area of consumer protection. The Inspection Service was most pleased with the passage of the Deceptive Mail Prevention and Enforcement Act which became effective last year, and with the fine work this subcommittee continues to do on behalf of the American Public.

The Scope of the Problem

The issues surrounding cross-border fraud are not only timely today, but foreshadow what we may expect tomorrow. The marvels of communication technology that improve our lives, also provide the means for crime schemes to cross any national border, quickly and with anonymity. Predatory solicitors are aggressively victimizing American citizens and businesses from outside the protection of our national borders by telephone, through the mail, and over the Internet. They remain faceless to their victims. The predatory techniques utilized by these operators are similar in scope to those the subcommittee uncovered in the hearing held in the 106th Congress on the *Hidden Operators of Deceptive Mailings.* In fact, we have found through investigations of cross-border fraud that quite often the victim pool comes from people who have in the past responded to various deceptive mailings within the United States.

The difficulties in accurately measuring the extent of the cross-border problem are the same encountered when measuring the scope of all frauds. The potential for fraud schemes is infinite. We learned through consumer focus groups during the *Know Fraud* Prevention campaign, that many frauds go unreported. Victims either do not know where to report fraud, or they are embarrassed to make it known that they have fallen victim to a fraud scheme. Law enforcement agencies can report the actual number of fraud investigations, arrests, and convictions they conduct each year. Consumer and government agencies can collect and report the number of complaints they receive. We can profile victims and losses in actual cases as will be discussed later in this testimony. However, in the final analysis, all the information available to us is only a portion of what is a much larger universe.

In the last year, the Postal Inspection Service has seen a 105% increase in the number of mail fraud complaints received from victims in the U.S.

concerning Canadian promotions. Although these complaints represent only 6% of all fraud complaints received by our Mail Fraud Complaint System, the increase is dramatic and telling. A few years ago, AARP reported that telemarketing fraud costs victims over $40 billion per year. In the November 1997 *Report of the United States and Canada Working Group on Cross-Border Fraud,* it was recognized that total sales from telemarketing in both countries has grown rapidly, reaching more than $400 billion in U.S. dollars per year. The group concluded that although most telemarketing activities are legitimate, as much as 10% of the total volume of telemarketing is fraudulent. We know the problem is significant and devastating to its victims. We know there are many who have lost their life savings to the relentless pursuit of telemarketers, and we know with relative certainty the problem will increase if we do not now resolve to address it aggressively.

Criminals utilizing the latest communication systems are able to prey on Americans and remain out of reach of our laws. Sadly, the victims are often those who can least afford it. The elderly on fixed incomes, the disadvantaged, or those simply trying to increase their life savings for retirement needs, appear in disproportional numbers as victims. Unfortunately, as technology improves and becomes more readily available, the number of countries where these predators chose to operate from will increase and so will the number of victims.

We have intelligence that indicates, in light of the laws enacted through the work of this subcommittee two years ago with the Deceptive Mail Prevention and Enforcement Act, mailers who have been operating in the shadows within our country have expanded their operations into the international arena. For example, recently we found a deceptive mail operator from the United States was mailing deceptive solicitations out of Canada to the United Kingdom and Australia. The borders of countries are often used as a shield by the operators. If you live in country A, mail out of country B, and victimize citizens of country C, you effectively shield yourself from regulation during the period of time needed to execute a scheme to defraud.

The Role of the Postal Inspection Service

One of the oldest domestic and international communications systems – the U.S. Mail – continues to play a key role within the modern global economy. Most electronic commerce and telemarketing promotions still must rely on traditional forms of delivery. Our mail system was designed to assure that there is always a reliable, efficient, affordable and secure means for American citizens to communicate and conduct commerce. For over two

hundred years, America's first special agents, later named postal inspectors, have had the responsibility for protecting postal employees, the mails, and postal facilities from criminal attack. Equally important, postal inspectors are entrusted to protect consumers and businesses from being victimized by fraudulent schemes or other crimes involving the mails such as identity theft. We also work to rid the mails of drug trafficking and money laundering; mail bombs; and are regarded as a world leader in the fight against one of the most despicable crimes – child pornography.

Today there are approximately 1,990 postal inspectors, 1,400 postal police officers, and 900 professional, technical and support employees. The Inspection Service has the primary responsibility of enforcing roughly two hundred federal statutes designed to protect the postal communications system of our nation.

Recently, a Harris poll revealed that the American Public feels significantly more confident about the security of the mail than the telephone, Internet or other means of communication. The privacy and protection afforded the mail is more certain and tangible. It is the primary mission of the Postal Inspection Service to preserve that confidence.

Fraud and Deceptive Mail Statutes

The Inspection Service is proud to be the primary enforcer of the first consumer protection law ever enacted – the mail fraud statute (18 U.S.C. & 1341). Interestingly, the need for this protection did not become apparent until the nation began to grow. Fraud promoters began to cross state borders to avoid local laws and take advantage of the absence of federal laws. As swindlers realized the adaptability of the postal system for perpetrating scams the problem grew worse. The advent of railway mail service in the 1830's allowed businesses to expand their customer networks, and because consumers could not otherwise easily obtain these goods, mail order sales skyrocketed. Unfortunately, many customers were duped by misleading advertisements or charges for merchandise they never received.

In response, Congress enacted the mail fraud statute in 1872, to better enable postal inspectors to protect citizens. Today, the mail fraud statute is used to prosecute everything from stock scams to loan scams, from telemarketing frauds to insurance frauds and many others. Illegal telemarketers and other fraud promoters not only rely on the mails to deliver and receive materials to further their scheme, they often use prize promotion solicitations to obtain identifying information. Once they have the

telephone number of a potential victim, they follow-up with telemarketing calls.

Current federal judge and former federal prosecutor Jed S. Rackoff wrote in 1980, "To federal prosecutors of white collar crime, the mail fraud statute is our Stradivarius, our Colt .45, our Louisville Slugger, our Cuisinart-and our true love." Even in an electronic world, the mail fraud statute is the weapon of choice in stopping widespread fraud, and it holds a unique place in the proud tradition of the U.S. Postal Inspection Service. During the past fiscal year, 3,257 investigations were initiated regarding possible mail fraud violations. The same year we obtained 1,377 convictions, resulting in prison sentences, fines in excess of $135 million, court-ordered and voluntary restitution to victims exceeding one billion dollars.

Our criminal enforcement efforts are not limited to federal prosecutions. We also utilize our expertise in conducting investigations of fraud schemes to provide assistance to state and local authorities in cases being pursued in state courts.

The False Representation and Lottery Statute, 39 U.S.C. & 3005, allows the Postal Service to take administrative action to return to consumers all mail sent in response to a lottery or a scheme that seeks to obtain money or property by mail through false representations. These proceedings will effectively stop the flow of money to the unscrupulous promoter. These statutes, which were strengthened by this subcommittee with the Deceptive Mail Prevention and Enforcement Act of 1999, now have more teeth as a stronger statute with stiffer penalties, and provide more effective tools for law enforcement.

One of the most effective tools is the administrative subpoena authority, which inspectors now utilize. The Inspection Service quickly made use of your work with the issuance of 31 administrative subpoenas, and the filing of 40 complaints that have resulted in 6 Cease and Desist Orders, and 36 False Representation Orders. Even more significantly, our Fraud Complaint System reflects a decrease of 27% in sweepstakes complaints. Since the focus of the subcommittee on deceptive mailings, we find fewer individuals participating in these promotions, indicating that the required disclaimers are being read by recipients. Clearly, the subcommittee's hearings on deceptive mailings have heightened the awareness of the public to the problem.

The Postal Service Law Department initiates administrative proceedings under this statute before an administrative law judge (ALJ). Following a decision by the ALJ, the matter is sent to the Postal Service Judicial Officer

for a final agency decision. For an order to be issued under the statute, the Judicial Officer must determine that the promoter is making the representations alleged and that the representations are materially false. Last fiscal year, complaints filed with the Judicial Officer alleging violations of Section 3005 resulted in 36 consent agreements, 44 cease and desist orders and 23 False Representation Orders.

Because the administrative proceedings may be time-consuming and mail scams often are of short duration, two federal statutes (18 U.S.C. & 1345 and 39 U.S.C. &3007) authorize the U.S. district courts to issue injunctions to prevent consumer losses while the administrative proceedings are pending. Section 1345 permits injunctive orders ranging from stopping the delivery of mail in response to the fraudulent solicitation to the appointment of a receiver to manage a fraudulent company and provide restitution to victims. Section 3007 allows the U.S. district courts to issue temporary restraining orders and preliminary injunctions ordering the Postal Service not to send or deliver mail sent in response to schemes that are the subjects of pending actions under the false representation and lottery statute.

In cases where a promoter uses a fictitious name or address in connection with a fraudulent scheme in violation of 18 U.S.C. & 1341 or to escape identification, the Postal Service can withhold mail in response to the scheme pending adequate identification and proof of entitlement to the mail. Administrative remedies under these statutes (39 U.S.C. & 3003 and 3004) were used in 151 cases during the past fiscal year, preventing the promoters' receipt of their intended victims' money.

Through the provisions of the Deceptive Mail Prevention and Enforcement Act, postal inspectors utilized our agency's subpoena authority 31 times and have recently received the first money from penalties levied as a result of the law.

To combat illegal foreign lotteries from victimizing American citizens, U.S. Customs Service officials work with the Inspection Service to stop such offerings from entering the country. U.S. Customs agents contact postal inspectors when they find such mail during border searches. The mail is detained and samples are forwarded to the Postal Service Law Department to determine their legality. If mail is considered illegal, the mailer is notified that the material is subject to destruction and may appeal the notice. If the mailer fails to appeal or loses the appeal, the detained mail is destroyed. Over 107,579 pieces were destroyed during Fiscal Year 2000 alone, and approximately one-half million pieces of foreign lottery mail has been destroyed since 1994.

The Cross-Border Issue

As referenced earlier, the con artists in the early days of our nation capitalized on the lack of federal laws by operating across state boundaries. Today's con artists are beginning to employ the same strategy across international boundaries to victimize Americans and avoid our laws. Like a ripple on a pond, the promotion origination points are gradually spreading farther and farther away from the victims. The Inspection Service and other agencies are beginning to see an increase in international fraud schemes employing online solicitations while relying on traditional methods of delivery. Unfortunately, when a U.S. citizen sends money to Europe or elsewhere for a product and does not receive it, there is little U.S. law enforcement can do. We need to develop strategies and methodologies to combat the growing problem.

The positive results attained by the subcommittee's efforts to deter deceptive mailings in the United States, may have inadvertently made cross-border promotions more prolific. As the subcommittee pointed out in its hearings on the *Hidden Operators of Deceptive Mailings* in the 106th Congress, anonymity is crucial to the success of many of these operators. As we more effectively pursue deceptive marketing techniques in the United States, deceptive operators find safe harbors by operating outside our borders.

The Inspection Service believes that the best strategy is to begin to build and test the solutions close to home. The United States and Canada share the longest unprotected border in the world. We share common English colonial roots that formed the foundation of our legal systems. And, we share a pioneering spirit and love of free enterprise. For those reasons and our common language, our two nations are well-equipped to develop solutions to emerging international economic crime challenges.

Currently, we see the more traditional fraud schemes coming from Canada. They employ a combination of telemarketing techniques and mailings. The reliance on overnight delivery for payment continues. The fraud scheme types we see most frequently from Canada include low interest credit card and credit repair, advance fee loans, security and investment, prize or sweepstakes, failure to provide, general misrepresentations about a product or service, office supply scams, and lotteries.

In one recent advance fee case investigated in Toronto, the promoters initially used Postal Money Orders as the payment method of preference. They later switched to Western Union Money Transfers. Respondents were

directed by promoters to use overnight mail to submit money orders payable to the named company at an address later identified as a commercial mail receiving agency (CMRA). The promoter utilized CMRA addresses in both the United States and Canada. Of course, no loans were ever issued. The average life of an individual telemarketing operation in this case was 60 days, at which time the principals resurfaced using new names, with new telephone numbers and CMRA addresses. The telemarketers utilized sophisticated cellular phones, pagers, and fax machines.

As U.S. law enforcement pursued telemarketers from state to state over the last three decades, certain trends emerged. The operators tended to develop relationships with one another using fulfillment centers familiar to them to furnish products. Promoters typically did not prey upon victims residing in their own state. In a number of instances we see families pass along the "family business" to succeeding generations. Using a telephone the reach of one telemarketer is boundless. Lists of victims are compiled in what the promoters coldly refer to as "mooch lists." The unfortunate victims are often not allowed to suffer one devastating loss, but are contacted again and again in a relentless manner to extract more money from them with false promises of recovering their loss. The practice is referred to as "reloading." And, somewhat cynically, the venues for this activity are known in the illegal telemarketing world as "recovery rooms."

As fraud operators began appearing in Canada more frequently, postal inspectors and other U.S. law enforcement agents began to reach out to their counterparts in the north. Like our own law enforcement officers, Royal Canadian Mounties, provincial and metropolitan police officers all share the same strong dedication "to serve and protect." In most instances, cooperation between Canadian and U.S. law enforcement has been excellent. However, because of the different laws and sovereignties, U.S. and Canadian officers are limited by jurisdiction in what they can do.

Because the telemarketing/boiler room issue was not a problem in Canada and did not focus on Canadians, there were no existing Canadian laws that proved effective in combating the problem for the Americans. Prosecutors relied upon established methods such as requesting assistance through the Mutual Legal Assistance Treaties (MLATs) and traditional extradition procedures. These methods have proven time-consuming, burdensome, and not as effective as we would like. Difficulties are often encountered in attempting to obtain business records and other evidence by U.S. law enforcement personnel. By the mid-nineties, it was clear to those closest to the problem that a fix was needed.

An Alliance Against Fraud

While meeting in Washington, D.C. in April 1997, President Clinton and Prime Minister Chretien directed officials to prepare a joint study examining ways to counter the growing problem of cross-border telemarketing fraud. In response to the directive the Cross-border Fraud Working Group was formed. The results of the initial meetings of the Working Group were published in the November 1997 Report of The United States – Canada Working Group to the President and Prime Minister. The report sited that total sales from telemarketing in both countries has grown rapidly, reaching more that $400 billion in U.S. dollars per year. However, illegal telemarketing was recognized by Canadian and American members of the working group as one of the most pervasive and problematic forms of white-collar crime in Canada and the United States.

The group prepared a list of recommendations which included the following points:

- Both countries to identify telemarketing fraud as a serious crime.
- Exploration of the use of remote testimony in criminal proceedings.
- Exploration of enhancements to the use of electronic surveillance in telemarketing cases.
- Examination of the regulation of telephone services and options for denying telephone services to telemarketing offenders.
- Consider needed modifications to the scope of mutual legal assistance treaties (MLATS).
- Clarification of rules governing the use of MLATS.
- Deportation options for offenders.
- Research into developing education and prevention programs.
- Sharing of strategies between the two countries at both the regional and national levels.
- Ongoing bi-national working group to coordinate efforts.
- Encouragement of regional task forces to cooperate to the extent possible.
- Further coordination through the examination of privacy and other laws relevant to cross-border shared access information systems with consideration to expanding access to the maximum extent possible.

The Cross-Border Fraud Task Force continues to meet. It provides a forum to exchange views, share best practices and develop solutions. The next meeting of this group is scheduled for the week of June 17, 2001, in Ottawa, Ontario, Canada. The Inspection Service pledges to continue to play an active role with this group.

I recently provided the subcommittee with the Inspection Service's perspectives on the success of the Task Force in addressing the fourteen recommendations it identified in 1997. The most significant accomplishment is that law enforcement agencies in both countries have identified telemarketing fraud as a serious crime. Collectively they view the cross-border aspects of the crime as a major challenge to overcome and have resolved to cooperate toward solutions. The Postal Inspection Service and other agencies have assigned agents to task forces in Canada, or encouraged others to develop and maintain contacts with the Royal Canadian Mounted Police (RCMP) or local provincial police forces.

Generally, both countries have demonstrated they view telemarketing as a serious crime by increasing penalties for fraud, through the creation of joint task forces, utilization of shared complaint databases such as the Federal Trade Commission's Consumer Sentinel, and/or Canada's PhoneBusters, conducting consumer education and fraud prevention initiatives, and by publicly acknowledging the significance of the problem.

The difficulties with obtaining U.S. victim witness testimony in Canadian court proceedings can be partially addressed through the use of video-conferencing. As stated earlier, often the victims are elderly and travel is difficult for them. Video-conferencing has been used with success in Canadian courts by having victims testify remotely. An Ontario Crown Counsel has discussed video-teleconferencing in a Cross-Border case to be tried in Ontario. And, a request for assistance was referred to the Middle District of Pennsylvania U.S. Attorney's Office for assistance with a video-conference. Federal evidence laws and procedures allow the use of remote testimony in legal proceedings. However, we still face certain logistical and practical considerations that are being worked out on both sides of the border, on a case-by-case basis. However, some judges just do not feel comfortable with videoconferencing of witnesses and insist on physical appearances. Funding for witness travel outside the country has become difficult within current agency budget design. This issue will need to be addressed in some fashion.

Federal law now permits electronic surveillance in telemarketing fraud cases without a court order when one party in the conversation consents to the surveillance. In the United States, a court order is required when neither party consents. However, the law in Canada requires a court order for any electronic surveillance, unless both parties consent.

Resolving the legal and practical considerations to allow for the disruption of telephone service of known telemarketing boiler rooms is highly important. It is our understanding that the U.S. Department of Justice has submitted a

request to Congress for legislation that would provide authorization to seek court orders to block or terminate telephone service to numbers being used for the conduct of telemarketing fraud. Currently, the only method available in the United States is through an injunction under 18 U.S.C. & 1345. Of course, this is not applicable to Canadian locations.

U. S. authorities (primarily DOJ) have encouraged an examination of the MLAT process that could streamline current procedures and minimize delays. We know of instances where requests have lingered for several years causing frustration on both sides of the border, so clearly the process needs to be streamlined. In the U.S. MLAT request training has been added to the law enforcement training curriculums of the appropriate agencies. Communication channels need to be opened between cross-border counsel and agents. The only incidents where we have been successful in a reasonable amount of time were when contact was made directly with the Crown Counsel assigned to the specific case.

Obtaining the actual evidence for court use still requires going through the treaty. This is a reasonable requirement because it is the only opportunity for the defendant or anyone with an interest in the evidence sought to be turned over, to challenge the legality of its having been obtained (e.g., challenging a wiretap).

Canadian legislation has addressed the expediting of extradition requests; however, we are not aware of any similar initiatives in the United States to address the cross-border extradition problem. Since the cross-border initiatives began, we have seen some cases move slightly faster than in previous years. Of course, there are still several ways defense attorneys can delay, first by challenging treaty requests for whatever evidence is needed, and then by challenging the extradition to the maximum extent.

The Inspection Service also needs to find a means to enforce its administrative subpoenas in Canada. We recently subpoenaed some Canadian businesses and are currently experiencing some problems with compliance from Canadian companies.

Enforcement Initiatives

There are three established and very active cross-border fraud enforcement initiatives between the United States and Canada. The "theaters of operation" are Montreal, Toronto, and Vancouver.

Project Colt (Montreal)

In January of 1998, the Royal Canadian Mounted Police (RCMP) formed Project Colt, as a multi-agency/cross-border task force targeting Montreal-based fraudulent telemarketing. A large percentage of Canadian fraudulent telemarketing occurs in Montreal, Quebec, Canada. The trend is toward aggressive telemarketing of fewer victims but for larger dollar amounts. Project Colt is based at the RCMP office in Montreal. It was initially comprised of experienced investigators from the RCMP, the Surete du Quebec (SQ), and the Montreal Urban Community Police (MUCP). In May of 1999, agents from the U.S. Postal Inspection Service, U.S. Customs Service, and the Federal Bureau of Investigation (FBI) joined Colt to focus on United States victimization.

Last Fall, RCMP management authorized funding for extensive electronic surveillance efforts. They also ordered a commensurate increase to their officers assigned to the effort. Colt investigations have resulted in criminal charges being brought against Canadians in Kansas, California, and Arizona, and the return of 9.6 million dollars to the victims. Their investigative initiatives resulted in searches and arrests in the Montreal area of members of a large organized promotion that has operated for several years. Since January 1998, Project Colt has been responsible for shutting down 14 boiler rooms in the Montreal area, 75 arrests (U.S. and Canada), and obtained restitution for victims in both countries of approximately $16 million Canadian ($10.67 million U.S.). Public loss to Montreal area boiler room promotions as reported to Project Colt or otherwise determined from evidence exceeds $76 million Canadian ($50,920,000 U.S.).

The benefits of the close working relationships between the two countries' law enforcement agencies and the wealth of intelligence and experience they are acquiring cannot be overemphasized. A recent successful Project Colt case netted extensive media coverage which is another way to educate the public by drawing attention to the matter. On the morning of February 9, 2001, a Canadian subject was arrested by postal inspectors and FBI agents while vacationing at the Grand Floridian Hotel in Disney World, Orlando, Florida. The arrest was made in execution of a warrant obtained on complaint of a postal inspector in the District of Massachusetts. The complaint charged violations of Title 18, U.S. Code, Sections 371 (conspiracy), 1341 (mail fraud), 1342 (using or assuming a fictitious name or address in connection with mail fraud or unlawful business), and 1343 (wire fraud).

This was one of several arrests and searches executed the same day, with all the rest executed by a force of over 100 law enforcement officers in the

area of Montreal. The evidence in support of the complaint was principally obtained as a result of an intense three-month investigation in the Montreal area by the Canadian police agencies which were provided to members of Project Colt. The investigation involved extensive electronic surveillance.

The alleged scheme involved a "recovery pitch" to victims of previous prize promotions. Telemarketers, disguised as lawyers, court officers or law enforcement officers, or other government officials, telephoned prospective victims, principally elderly Americans. The promoters told the prospective victims that the callers have come into possession of substantial sums of money which rightfully belong to the prospective victims. In order to claim their money, the victims were told they must send sums of money ranging in amounts from thousands to tens of thousands of dollars to the callers' nominees.

Evidence gained from the electronic surveillance, as set forth in the affidavit in support of the complaint, indicated that from January 9 through 30, 2001, forty-six (46) individuals in the United States sent a total of $436,278 to various addresses in the Montreal area set up in connection with the original scheme. Additionally, another 208 individuals indicated they were interested in participating and would attempt to arrange to obtain and send to Montreal an amount that would total another $2,978.039 in the same three-week period.

Another key Colt strategy is the network that has been set-up to intercept victim payments clearing Canadian Customs enroute to the promoters. Overnight delivery companies are notified of the fraud and the payments are withdrawn by the RCMP.

The analysis and case leads stemming from the efforts of Project Colt will continue to assist both countries stem the tide of telemarketing.

The Strategic Partnership (Toronto)

In October 2000, the Postal Inspection Service was pleased to sign a Memorandum of Understanding (MOU) officially joining the Strategic Partnership. In addition to the Inspection Service, the Partnership members include the Toronto Police Service, the Ontario Ministry of Consumer and Business Services, Industry Canada, and the U.S. Federal Trade Commission, Ontario Provincial Police, and PhoneBusters. The Partnership is based in Toronto, Ontario, Canada. The staff is not permanently based in Toronto, but rather affiliated from their respective home bases and coordinate investigative activities centered in Ontario Province.

The predominant fraud emanating from Toronto according to the FTC's Consumer Sentinel involves advance fee telemarketing schemes. In one case, a Toronto based group targeted U.S. victims, taking fees and offering loans, which never materialized. On February 23, 2000, Toronto police executed four search warrants on a boiler room operated by the firm. Nine suspects were arrested and charged with fraud. In coordination with the U.S. Postal Inspection Service, the Canadian charges were subsequently stayed and the suspects will be extradited to the U.S. on charges of mail fraud. The federal grand jury sitting in Harrisburg, Pennsylvania returned an indictment on April 11, 2001. This investigation resulted from information received from the FTC and the Postal Inspection Service regarding victim complaints. Industry Canada provided information from their database and open files, and PhoneBusters provided the initiative with information on the companies and additional victim information.

Since February 2000, over $550,000 (Canadian) has been seized for victims from Partnership investigative efforts. Moreover, approximately 36 boiler rooms have been completely shut down.

In the first Partnership case that resulted in a criminal indictment, an article appearing in the May 11, 2001 edition of the Toronto Sun was titled *"U.S. posties sign on to help T.O. cops."* The case involved an advance fee telemarketing promotion that began with published advertisements appearing in the United States that offered loans for individuals with bad credit. Callers responding were told they need to pay an advance fee but never heard from the firm once they paid the fee. The scheme netted $2 million from victims over a two-year period. Ten Toronto residents were charged as a result of the investigation.

Although it predated the formation of the Strategic Partnership, Operation GEMSCAM was successfully conducted with the contributions of many of the Partnership members. Operation GEMSCAM was the work of an international investigative task force led by the U.S. Postal Inspection Service and the Royal Canadian Mounted Police that spanned an eight-year period. Significant assistance was provided by the Toronto Police Service, PhoneBusters, the Royal Cayman Police and the Federal Trade Commission. As a result of the investigation, the Middle District of Pennsylvania announced 11 indictments and 16 criminal informations charging 125 defendants (97 Canadian Nationals) for fraudulent "liquidation story" telemarketing activity.

The "liquidation story" is used to make additional sales or collect advance fees from vulnerable victims who possess unmarketable investments, i.e., gemstones, "precious" metals and bulletin board stocks. The telemarketers

falsely promised the "liquidation" of the investments at a substantial profit upon completion of these purchases or advance fee payments. Confirmed losses to 5,000 United States, Canadian and European victims exceed $100 million.

To date, over $4 million has been distributed to victims as restitution. An additional $3 million in restitution and fines exceeding $550,000 have been ordered by the United States District Court. Convicted telemarketers have been sentenced to terms of imprisonment ranging from three to fifty-one months.

Additional encouragement for the excellent cooperation shown by the Partnership will be given when it will be presented with the prestigious National Association of Consumer Agency Administrations (NACAA) Consumer Agency Achievement Award at the end of this month.

Vancouver Task Force (Vancouver)

The third initiative in Canada is known as Project Emptor. It is based in Vancouver, B.C., Canada. It is comprised of five members of the RCMP, an investigator from the Provincial Attorney General's Office of Consumer Protection, and an investigator from Industry Canada. U.S. participants include the Postal Inspection Service, the FBI, and the FTC. There is a preponderance of lottery and bond related investigations. To a lesser extent, intelligence has shown a telemarketing crime problem involving products- everything from pills to television sets.

In August of 1998, the Inspection Service concluded one of the largest cross-border fraud cases to date with the conviction of James Blair Down of Vancouver, B.C., Canada and Barbados. Mr. Down pled guilty in federal court in Seattle for his part in the operation of a fraudulent lottery marketing enterprise. Down sold international lottery products to U.S. residents through illegal interstate transportation of gambling material. Using trade names such as "The Lottery Connection," "Winners," "New Eagle," "International Fortune Bureau" and "Project Rainbow." Down's staff operated from telephone rooms in Vancouver and Kelowna, B.C., and Toronto, Ontario, Canada. They marketed chances, shares and interests in Canadian, Australian, Spanish, Irish and various U.S. lotteries, mostly to senior citizens.

As part of his plea agreement with the government, Down forfeited $11.7 million, to be paid in restitution to the victims of the scheme. Moreover, an additional $1 million seized in New Jersey became part of a forfeiture settlement after that portion of Down's promotions was investigated for

fraud. During the investigation, Seattle postal inspectors learned that Down's victims averaged 74 years of age, losses ranged from $10,000 to $329,000 and the average charge for lottery products was $50,000. Although initially beset with challenges, the case is viewed today as a success story of how cooperation in cross-border crime investigations can work. Mr. Down was sentenced in the United States but was allowed to serve his prison sentence in Canada.

Conclusion

The Inspection Service has been involved with the cross-border fraud issue for several years. It was a natural evolution as we followed the trail of the fraud promoters. As pointed out earlier, technology has provided new opportunities for those bent on conducting fraud schemes to victimize greater numbers while remaining relatively hidden. There are several areas we offer the subcommittee to consider as you contemplate what attention may be needed to this issue that is impacting so many American citizens.

The Inspection Service enthusiastically supports the continuation of the existing Cross-Border Forum and its associated working groups. The dialogues, relationships, joint enforcement efforts and improvements stemming from the first years of this group demonstrate its great value. The Inspection Service commends the U.S. Department of Justice for taking the leadership of the U.S. delegation. It was a visionary step.

We commented earlier on the status of the recommendations made by the first cross-border working group. These issues are still relevant. However, several areas require additional sustained attention before real improvement can be realized. Some may require legislation and some simply the continued cooperation of the working groups. They include:

- A funding solution for witness travel and videoconferencing. Perhaps a solution might include authorization to set aside criminal fine money resulting from telemarketing cases to use for this purpose.
- Continued enhancement to the existing MLAT agreement.
- Explore remedies, legal and technological, to disrupt telephone service of known boiler rooms or illegal telemarketing operations.
- Enhance communication channels between cross-border counsel and agents.
- Streamline the process to obtain requested records and testimony.
- Encourage additional regional and functional partnerships. The Consumer Sentinel and PhoneBuster partnership is a great success story.

- Encourage law enforcement agencies and consumer groups to share complaint information.
- Establish joint fraud investigative training initiatives to include Canadian and U.S. law enforcement personnel together. The combined programs will promote a cohesive and unified approach to the problem. Further, it will establish relationships, encourage the sharing of strategies, and instill an understanding of the requirements of both nations' legal systems.

Alternative Remedies

The crime of fraud is substantially different from a crime of violence such as robbery. In a fraud, the consumer makes a conscious decision to participate or not. Time is on their side. A choice is offered and a decision must be made before there can be a victim. The right decision can only be an educated decision. It is the challenge of law enforcement, consumer groups and government leaders to educate consumers not to become victims. Therefore, through fraud prevention programs we can continue to reduce the number of victims. Together, we need to continuously reinforce the prevention message.

Prosecutors and judges share this belief as well. Several years ago a major mail fraud investigation was concluded involving a telemarketing advance fee scheme. Nearly four million dollars was seized for forfeiture. The large number of victims eliminated the practicality of restitution. Therefore, the assistant United States attorney in the case recommended to the Inspection Service that the government should forfeit the money and hold it in a separate Fraud Forfeiture Prevention Fund. The court sanctioned the agreement as did the Department of Justice. By an agreement with the court the money was to be used first and foremost for fraud prevention and consumer education programs. Short of that, it was permissible to use the funds to investigate fraud promotions. Indeed, an innovative approach to preventing future victimization.

During the subcommittee's hearing on Deceptive Mail, the Chief Postal Inspector announced for the first time that the Inspection Service was leading an interagency alliance in the largest consumer protection campaign ever attempted. *Project Know Fraud* was launched in November of 1999 with public service announcements and a national press conference that included the Postmaster General, the Attorney General, and representatives of all the partners- FTC, FBI, SEC, BBB, and AARP. There were approximately 100 other coordinated press events around the nation. The first *Know Fraud* campaign consisted of a postcard with important consumer tips on how individuals can protect themselves and their loved

ones from illegal telemarketing solicitations. It included a toll free number to call for more information or to register a complaint, a Web site, and much more. The card was mailed to every household in the nation- 120 million addresses.

In July, we will be launching a second *Know Fraud* campaign focusing on the fastest growing crime identity theft. The strategy is to continue to evolve the *Know Fraud* concept on an ongoing basis and build on the consumer awareness momentum. One approach is to select areas of the country where there are inordinately large numbers of victims for a certain type of crime, for example, victims of telemarketing fraud from Canadian promoters. A Town Hall Meeting will then be scheduled to address the type of prevalent crime schemes in that area and how individuals can protect themselves or report incidents. The Inspection Service intends to explore Canadian interests in partnering in the *Know Fraud* prevention initiatives. It would provide an excellent forum to share information and educate consumers on both sides of the border to protect themselves.

Local prevention initiatives are oftentimes more effective in addressing the local needs. In the Inspection Service Pittsburgh office just such an initiative was launched. Members of the Senior Action Coalition and the Postal Inspection Service assembled a packet of materials on how seniors can protect themselves from be victimized by fraud schemes tailored just for them. The one brochure contained a compelling photograph of a senior with the caption "He lived through two world wars, fought in one. He helped raise six children and three dogs. He saved a long time for his retirement. Don't let one phone call take it all away." The other information included the Inspection Service brochure on Preventing Mail Fraud and SEC's Cold Calling Alert, and others.

Many other initiatives have been aimed at victims susceptible to this type of scheme. For example reverse boiler rooms are used very effectively throughout the United States. The reverse boiler room works by using "mooch lists" obtained from prosecuted telemarketing operations, and calling the names to warn them of the risks of illegal telemarketing. Often federal, state and local prosecutors participate. In certain instances celebrities or government officials participate to help make it a "media event" that will spread the message more effectively to a wider audience.

One theme was pervasive throughout our consumer protection campaigns- a large percentage of the American public do not know where to report frauds, and there seem to be too many complaint databases. We need to simplify the process for the consumer. Also, one of the recommendations of the working group was to share intelligence. Accordingly, the Postal

Inspection Service and the FTC recently signed a memorandum of understanding to share fraud complaint information. This agreement formalizes a partnership that has evolved over the last several years. Both agencies lead Project Know Fraud and share many similar initiatives. Consumer Sentinel also has a partnership with Canada's PhoneBusters.

The FTC has recently expanded its Consumer Sentinel System with an international capability making it more useful to U.S. and Canadian law enforcement and regulatory agencies that investigate telemarketing. However, we recently learned from the cross-border task force that Article 29 of the Canadian Competition Act appears to create significant impediments to information-sharing by Canadian and U.S. authorities. To be successful in combating cross-border frauds we will need to come up with alternatives to address such challenges while waiting for any necessary legislative changes that benefit consumers.

The Inspection Service has a unique position as a member of the International Postal Community to enhance security and develop alternative strategies. For example, the notorious 4-1-9 fraud letter from West Africa has plagued most industrialized countries for the last several years. Little could be done using traditional methods. The Chief Postal Inspector, in his position as President of the Postal Security Action Group of the Universal Postal Union, developed a cooperative strategy whereby the postal administrations of the affected countries worked toward a solution together. The group quickly agreed that the fraud letters bore counterfeit postage, and agreed to allow for their seizure and destruction using existing postal policies and procedures, enhanced through memorandums of understanding (MOUs). Since that time over five million letters have been seized and destroyed. The problem in the mails has been reduced significantly. Unfortunately, now the promoter have moved the scheme onto the Internet.

The Inspection Service is now using that "postal family connection" to develop solutions to the cross-border problem. We have been working closely with Canada Post on finalizing a MOU to allow for combined uses of our civil administrative powers to stop fraudulent mail. For example, ideally we want to stop victim mail from reaching the promoter in Canada. Our authority cannot cause the mail to be stopped in Canada. We are working on a means where Canada Post will utilize their Prohibitory Order authority on addresses we have targeted from the U.S. This strategy has great potential of saving numerous individuals from ever becoming victims in the first place.

Moreover, the Inspection Service has three standing partnerships with industry groups to work together to reduce losses from fraud and theft. The three groups include the Mail Order Task Force, the Rebate Fraud Task Force, and the Credit Card Task Force. Each has its own success story of reducing fraud losses and sharing best practices. For example, the now familiar concept of credit card activation was the result of a postal inspector working with the Credit Card Task Force. Canadian agencies and business have begun to show interest in joining these groups. They have attended several of the meetings. A cross-border make-up would be highly advantageous in attacking the fraud problems of North American and the Inspection Service will encourage this prospect.

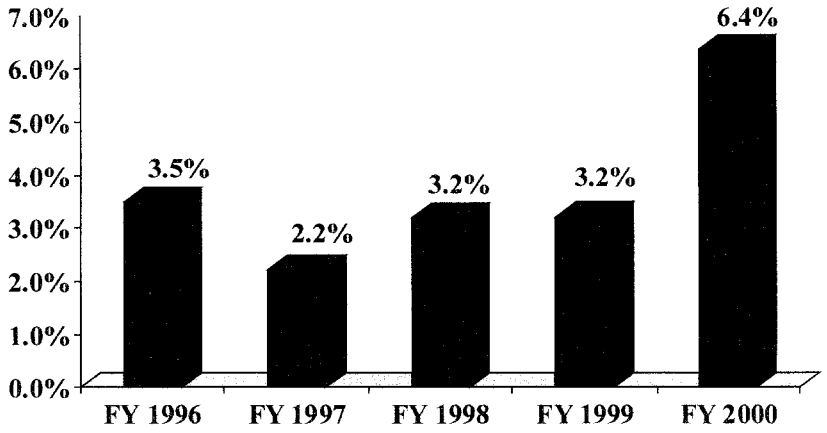
The Postal Service just concluded an exhaustive process to enhance its regulations governing the registration and delivery to commercial mail receiving agencies (CMRA's). CMRA addresses frequently appear in fraud investigations. In fact, case examples in this testimony illustrate how cross-border fraud promoters utilize CMRA addresses to carry on their schemes and avoid detection. The Inspection Service intends to inform our Canadian counterparts of the reasoning behind the changes. Ideally, Canada may conclude that similar regulation would be beneficial for CMRA's operating in that country. The primary achievement of the regulatory change was the requirement for the address designation "PMB" for private mailbox, or "#" if preferred by the addressee. This will provide added protection to consumers that the address they are mailing to is a CMRA.

The Postal Inspection Service and its Project Colt partners are presently working on an effort with the cooperation of Western Union to add internal procedures to help prevent and detect the international transfer of victim monies. They also work closely with UPS and FedEx. Overnight delivery is the principle method of payment used by schemers to circumvent law enforcement efforts to intercept physical payments prior to delivery. The Postal Inspection Service also has a formal agreement with Peace Bridge Brokers which provides Canadian Customs clearance on overnight Purolator mail deliveries. Postal Money Orders, however, remain a victim remittance of choice. Our Money Order Division has worked closely with investigators to detect recent money laundering trends, and curtail the negotiation of domestic money orders in Canada.

Finally, as stated earlier, the Inspection Service views the cross-border issues currently being addressed with Canada, as the precursor to similar crimes originating in other countries around the world. We also see the strong need to include consideration of the Internet in any strategy we develop. Crimes originating online will continue to increase and provide a means to cross any national border.

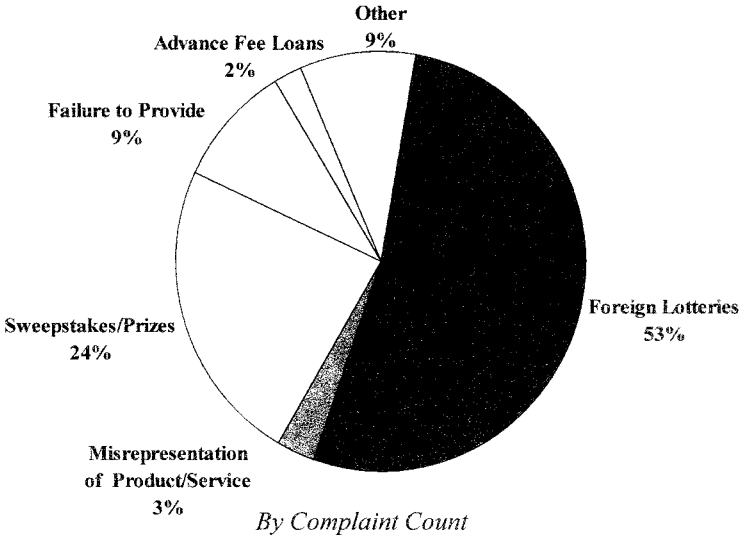
The Postal Inspection Service commends the members of the subcommittee for focusing attention on this very significant issue. We greatly appreciate being invited to contribute our experiences and recommendations.

Percentage of Complaints from US Consumers Against Canadian Companies*

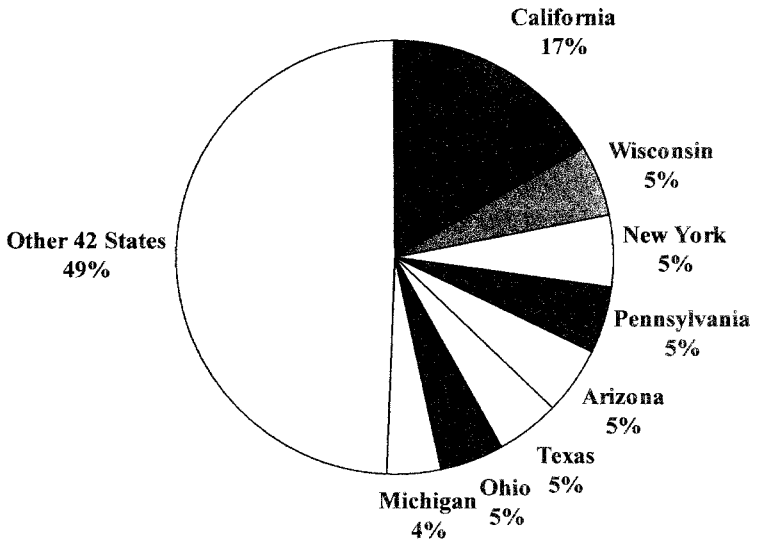


* Percentage is based upon the total number of complaints reported by fiscal year.

US Consumers Top Complaints Against Canadian Companies
Fiscal Year 2000



Origin of US Complaints Against Canadian Companies
Fiscal Year 2000



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Testimony of Vermont Attorney General William H. Sorrell
Before the Senate Permanent Subcommittee on Investigations
Of the Committee on Governmental Affairs
Regarding

Cross Border Telemarketing Fraud:
Hurdles to Effective Investigation and Prosecution
June 15, 2001

In Vermont, as in other states, the number of cases of telemarketing fraud originating in Canada is extremely high. Of the 90 cases our office has investigated in the past eighteen months, involving several hundred victims, all but four involved Canadian telemarketers. Prosecution of these cases is extremely difficult because of a number of factors, several of which could be addressed with assistance from Congress.

My testimony will cover the concerns which Vermont, in consultation with other states, has identified regarding the effectiveness of investigating and prosecuting cross-border telemarketing fraud crimes under current conditions. I will also provide recommendations for how Congress could improve this situation, as well as my answers to the specific questions posed by the Subcommittee.

I. Mutual Legal Assistance Treaty and Extradition Processes are Unduly Slow

Problem – In the few cases where states have tried to extradite indicted criminals from Canada, the extradition process on both sides of the border has been unduly slow. According to anecdotal information from law enforcement, it is not unusual for a two-year or longer wait in the extradition process before an indicted defendant is turned over to US authorities. In some cases, an extradition request may not get a preliminary review for six months at the United States Department of Justice's Office of International Affairs, and only then will OIA request revisions. After revisions are made, it might be another year before the extradition request is sent to Canada.

A representative from Project Colt, a US/Canadian multi-agency telemarketing fraud enforcement task force based in Montreal, has told us that if a Mutual Legal Assistance Treaty (MLAT) request comes into their offices during an active time in the one large case they handle at a time, the request will sit untouched until that case is resolved. It is his belief that US prosecutors treat MLAT requests from Canada much the same way.

In an attempt to verify our anecdotal information, we asked the Department of Justice and the Federal Trade Commission for the average processing times for requests for assistance under MLAT. They were unable to give us that information readily, and as far as we know, they do not currently collect it.

Delays in MLAT and extradition are especially troublesome in state-based prosecutions. State cases typically have a smaller number of victims than larger federal cases. The death or serious illness of a key victim-witness will not infrequently doom a state prosecution, leaving a defendant indicted but not convicted.

How Congress Can Help – Congress should ask that DOJ, working with the FTC, the states and federal law enforcement, review its MLAT procedures and identify steps that would accelerate that process. To obtain more accurate information about the delays in the process, Congress could request from the US Department of Justice's Office of International Affairs a periodic report containing the average processing times of the following stages of the MLAT process: (1) the time between initial request from a state and initial review at DOJ, (2) the time between the filing of a revised request and decision by DOJ to request or not request extradition, (3) for those cases in which extradition is requested, the total time between initial request and notice to Canadian authorities, and (4) the time between when notice is given to Canadian authorities and extradition is completed or denied.

In the past, the National Association of Attorneys General sponsored a fellowship program whereby an assistant attorney general was placed in the extradition office at DOJ, with travel and housing expenses paid by grant funds and the salary paid by the home state. This program is currently in existence for the computer crime/intellectual property section of DOJ. Funding to revive the position in the extradition office, as well as additional resources for the Canada desk at the Office of International Affairs, could help ease the delays currently experienced in the MLAT process.

II. Funding Investigator and Victim-Witness Travel to Canada

Problem –Vermont and many other states have taken an active role in investigating telemarketing fraud crimes that target our residents. Many of these cases have originated in Canada. Often the goal is to prosecute the crime in the state where the victim lives (a victim venue case). Victim venue prosecutions are desirable for a

number of reasons. When a crime is committed in a state, the residents of that state have a reasonable expectation that the wrongdoers will be held accountable in the courts of that state. Practically speaking it is often very difficult for senior citizen victims to travel to Canada for court proceedings. Additionally, courts, judges and juries in the states are more sympathetic to our victims than are Canadian courts, and courts in the United States are far more apt to impose meaningful sentences and restitution orders than are Canadian courts.

In order for Vermont or any other state to successfully investigate and prosecute a cross border crime we need investigative cooperation from Canadian law enforcement authorities. They typically have access to case specific information that is key to effective law enforcement action. This information can include, but is not limited to, facts about the perpetrator's aliases and true name, addresses, telephone numbers, known methods of operation, criminal record, associations with the business community, other past or pending criminal investigations, and locations to be searched for evidence.

In many instances these requests by the states do not require new investigation by Canadian authorities; rather, our requests are for information that is already in their investigative files and databases. Nevertheless, our investigators and prosecutors have been stymied in their attempts to effectively investigate and prosecute these crimes because of extreme difficulty in obtaining necessary investigative case information from Canada. Canadian investigators frequently tell us that they do not have the resources to answer states' requests for investigative information, even if that information may be in existing files and computers.

Because many state investigators have had difficulty obtaining information from Canadian officials through formal channels, some have developed individual relationships with Canadian law enforcement officers in order to obtain needed information on a timely basis. Trips to Canada for this purpose are expensive and not within the budgets of most states.

At the same time, Canadian law enforcement is unable to prosecute a large number of cases because of limitations in their resources. Their approach has been to focus on a small number of very large cases. For example, the head of the intercept team at Project Colt confirmed recently that Project Colt works one major case at a time, and when that is done, moves on to another one. To our knowledge, the Canadian criminal telemarketers target US victims; very few of the Canadian prosecutions involve Canadian victims. The effect is that many cases with US victims are not being investigated and prosecuted at anything approaching the rate they should be, even while states like Vermont stand ready to prosecute Canadian telemarketing criminals.

In the relatively few cases that are brought in Canadian courts against Canadian criminals, it is often essential that the US victims travel to Canada to testify. Canadian authorities have expected the states or the federal government to pay the attendant travel costs. Vermont's telemarketing fraud attorney, and the consumer protection project director and chief counsel at the National Association of Attorneys General (NAAG) have been told by Canadian law enforcement that many Canadian investigators and prosecutors will terminate an investigation or refuse to file charges against Canadian criminals without up-front assurances of funding for victim testimony. The effect is that some known criminals are never held to answer for their crimes, and US victims, often senior citizens, have their life savings and their dignity stripped, without ever having their day in court.

The importance of adequate funding for victim-witnesses to travel to Canada can be seen in the changes in pleas in Canadian criminal cases. Law enforcement in Toronto and the FTC have entered into a Memorandum of Understanding which includes FTC's commitment to engage in "best efforts" to provide funding for travel to Canada for victim-witnesses. When a Canadian criminal case file indicates that the FTC will pay for the victim to travel, plea bargains are more forthcoming than in those cases without that commitment.

The states do not have travel budgets that readily allow for travel of either investigators or victim-witnesses to Canada. Currently, the Bureau of Justice Assistance will not allow the states to use federal grant monies for such travel.

How Congress Can Help – Additional funding that is earmarked for state investigators and prosecutors to travel to Canada is essential if we are to overcome this hurdle to prosecutions in either Canada or the United States. Congress should appropriate money to the US Department of Justice that is earmarked for victim-witness and investigator travel to Canada. These monies should be distributed to the states, and should be available for state prosecutions or to assist in Canadian prosecutions. Congress could also increase BJA grants to NAAG to allow those monies for the same purposes.

In order to leverage the most from a congressional authorization, the money could be placed in a revolving fund to be replenished by payment of a fine or penalties once a prosecution is completed, assuming Canadian law allows for a monetary penalty to be used for reimbursement of expenses to another governmental entity.

Through discussions with appropriate Canadian authorities, Congress can assist the states in obtaining essential information on fraudulent telemarketing against US victims. This could take the form of discussions with the diplomatic service, the Royal Canadian Mounted Police, and other Canadian authorities.

III. Lack of Resources to Hire Canadian Legal Counsel to File Asset Freeze Requests in Canadian Courts

Problem – An essential early step in the stateside prosecution of a Canadian based telemarketing criminal is to hire Canadian legal counsel to file asset freeze requests in Canadian courts. Canadian telemarketing criminals have stolen hundreds of millions of dollars from US victims before being closed down. For example, Blair Down, British Columbia telemarketer, is estimated to have stolen at least $200 million in US funds from US victims in his scams.

Typically, the most promising way to obtain restitution for our victims is by freezing assets of the telemarketing criminals in Canada. (This is similar to an asset freeze in a RICO case in the states.) Freezing assets requires hiring Canadian legal counsel to appear in Canadian courts. Because of the complex nature of these cases, it is not unusual to hear that Canadian legal counsel require a $15,000 to $20,000 up-front retainer just to obtain an order. If the order is contested, Canadian counsel require another $15,000 to $20,000 to maintain the order. The most expensive asset freeze case of which we are aware, involving assets frozen in Belize and Antigua through a Canadian order, cost $160,000.

Governmental attorneys on both sides of the border are reluctant to become embroiled in this type of litigation but few, if any, states have such funds to advance for representation by private counsel specializing in this area. Yet, without this important step, a successful prosecution for restitution or civil enforcement action is most unlikely. If the criminals have identifiable Canadian assets, they typically move them out of Canada at the first suggestion of a criminal prosecution. If this is allowed to happen, it is oftentimes impossible to trace and recover the assets so that they may be returned to the US victims as restitution.

How Congress Can Help – Congress can appropriate money to the US Department of Justice that is earmarked for states to retain Canadian legal counsel to file asset freeze requests in Canadian courts for state prosecutions. Congress can also increase BJA grants to NAAG that will provide monies for the same purpose. Again, in order to leverage the most from a congressional authorization, the money could be placed in a revolving fund to be replenished from the frozen assets once the prosecution is completed and before distributed of the assets to the victims for restitution.

Conclusion

The Attorneys General of the various states have been investigating and preparing criminal prosecutions of fraudulent Canadian telemarketers. We want to bring these cases to protect our citizens from devastating losses of financial resources and harm to their personal well-being. We also want Canadian authorities to aggressively and successfully prosecute Canadians who prey on our consumers. There are more than enough cases to keep law enforcement in both countries busy far into the future.

In order to have effective prosecutions, we need your help. We hope that you can help to increase the speed of processing requests for assistance and extradition from the United States. We also need you to provide essential resources to facilitate travel by our victims and investigators to Canada to increase Canadian prosecutions and the amount of Canadian investigative information made readily available to US prosecutors. Finally, we need your financial assistance to ensure that whatever assets could be available to pay the costs of restitution and prosecution remain available for those purposes.

Thank you for this opportunity to share with you the experiences and recommendations of Vermont and the other states working to combat cross border telemarketing fraud.

STATEMENT OF MARY ELLEN WARLOW

ACTING DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION
U.S. DEPARTMENT OF JUSTICE

BEFORE THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

JUNE 15, 2001

Good morning, Mr. Chairman and Members of the Subcommittee. I am pleased to appear before you this morning to testify about the work that the Department of Justice has been doing to combat cross-border telemarketing fraud.

With your permission, I would like first to provide an overview of the problem of cross-border telemarketing fraud, then to summarize how the Department and other U.S. law enforcement authorities have been actively combating the problem, and identify some areas where continuing activity by the Department may be needed to enhance cross-border cooperation in telemarketing fraud cases.

As I believe the Subcommittee is aware, in 1997 the U.S. and Canada established a Working Group on Telemarketing Fraud, which has served as an important forum for strengthening bilateral enforcement efforts in this area. Next week, the Working Group, which is chaired on our side by a senior attorney from the Criminal Division's Fraud Section, will be meeting in Canada and reporting to Attorney General Ashcroft and the

Canadian Solicitor General at the U.S.-Canada Cross Border Crime Forum.

I. Overview

In its November 1997 report, the United States-Canada Working Group on Telemarketing Fraud stated that telemarketing fraud "has become one of the most pervasive and problematic forms of white-collar crime in the United States and Canada, accounting for as much as 10% of the total volume of telemarketing."[1] In 2001, cross-border telemarketing fraud remains a pervasive form of white-collar crime in North America, although legislative and operational initiatives by both the United States and Canada have increased the effectiveness of law enforcement efforts.

Today, criminal telemarketing fraud operations in Canada remain strongly concentrated in three major metropolitan areas: Montreal, Toronto, and Vancouver. The following summary of criminal telemarketing in each of these three areas reflects the Department's understanding of current information from U.S. and Canadian law enforcement authorities:

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[1] United States-Canada Working Group on Telemarketing Fraud, Report 1 (November 1997) [Working Group Report], *reprinted at* http://www.usdoj.gov/criminal/uscwgrtf/index.html. The Working Group, which was established in 1997, consists of representatives of a wide range of United States and Canadian law enforcement and regulatory agencies. The United States delegation has included representatives of the Department of Justice (Criminal Division and United States Attorneys' Offices), the FBI, the Postal Inspection Service, the Customs Service, the Secret Service, the Internal Revenue Service, the Federal Trade Commission, the Federal Communications Commission, and the state attorneys general (National Association of Attorneys General and individual attorneys general). The Canadian delegation has included representatives of Justice Canada, provincial ministries of justice, the Solicitor General, the Royal Canadian Mounted Police (RCMP), the Competition Bureau of Industry Canada, Canada Post, and the Ontario Ministry of Consumer and Commercial relations.

- Montreal The greater Montreal area is the location of approximately 5 to 10 large telemarketing operations, plus an unknown number of smaller telemarketing operations. These operations, which use anywhere from a single operator to nearly 30 employees, concentrate on schemes offering foreign lottery chances and prizes or sweepstakes, as well as so-called "recovery rooms." (In the "recovery room" scheme, telemarketers pretend to be law enforcement agents, lawyers, or others who can help telemarketing fraud victims recover their money, but insist on the victim paying even more money to pay nonexistent "taxes" or "fees" to the telemarketers.)
- Toronto The greater Toronto area has approximately 50 to 60 fraudulent telemarketing operations, some of which can be as large as 40 or 50 employees. These operations are conducting a variety of schemes, including offering advance-fee loans, credit-card "protection," stock swaps; prizes and sweepstakes; and "investment-grade" gemstones.
- Vancouver The lower mainland area of British Columbia – including Vancouver, Burnaby, North Vancouver, Richmond, and Surrey – has approximately 220 to 250 fraudulent telemarketing operations. These operations, which typically use anywhere from 3 to 35 or 40 employees, concentrate on schemes involving foreign lotteries, investments in so-called "British bonds," credit-card protection, recovery rooms, and fraudulent billing of compromised credit cards.

Several aspects of all of the Canadian-based schemes, wherever they are located, are noteworthy. A number of these operations take extraordinary measures to increase the difficulty of successful investigation and prosecution. These measures include using cell phones (sometimes in conjunction with prepaid "calling cards"), which can be discarded after several weeks of intensive use; using stolen identity cards to open mail drops for receipt of payments that victims mail to them; using multiple mail drops that shuttle victim-related mail through multiple destinations; impersonation of FBI and Customs agents or RCMP officers, to make victims believe that law enforcement is already aware of their losses; contracting with other telemarketing "boiler rooms" to do their work; and laundering of fraud proceeds through foreign bank accounts. In addition, U.S. and Canadian law enforcement have noted the involvement of organized crime in some of these telemarketing operations, although organized crime does not dominate fraudulent telemarketing as a whole.

While the preceding summary focuses on Canadian-based telemarketing schemes, I should note that Canada has no monopoly on cross-border telemarketing fraud. U.S. law enforcement authorities have investigated and prosecuted U.S.-based telemarketing operations in the Buffalo and South Florida areas that were targeting Canadian residents, just as various Canadian-based operations have targeted U.S. residents.

II. Law Enforcement Response

Let me turn now to the response by U.S. law enforcement to cross-border

telemarketing fraud. Last year, the Department of Justice and other U.S. law enforcement agencies prepared a detailed report on the status of implementation of the recommendations in the 1997 report of the U.S.-Canada Working Group on Telemarketing Fraud. In the interest of time, I will not present a point-by-point review of all of the recommendations; instead, I have attached a copy of the 2000 status report to this statement, so that the Subcommittee has a more complete record.

With the Subcommittee's permission, I would like to focus on two of the recommendations from the 1997 Working Group Report, to highlight some of the more significant actions that the United States has taken to combat cross-border fraud.

A. Recommendation - Telemarketing Fraud as Serious Offense

The Working Group's first recommendation was "that the governments of both countries and their representative agencies clearly identify telemarketing fraud as a serious crime . . . ."[2] From the early 1990s to the present, the Department of Justice has considered telemarketing fraud to be a serious white-collar crime that requires sustained attention and dedication of significant investigative and prosecutive resources. In the 1990s, for example, the Department worked in close coordination with the FBI and other law enforcement agencies to carry out three nationwide undercover operations directed at telemarketing fraud -- Operation Disconnect (announced March 1993), Operation Senior Sentinel (announced in December 1995) and Operation Double Barrel (announced in

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[2] *Id.* 7.

December 1998). These operations resulted in the indictment, arrest, and prosecution of more than 1,400 telemarketers in the United States and Canada by federal, state, and local law enforcement.

Since these three operations, U.S. Attorneys' Offices and the Department have continued to pursue criminal investigations against fraudulent telemarketers located in Canada. Within the past 18 months, for example, U.S. Attorneys' Offices in Boston, Los Angeles, Phoenix, Shreveport, and Tampa have brought a variety of criminal cases against Canadian-based telemarketers:

- June 7, 2001 - District of Arizona (Recovery Room) On June 7, 2001, Angelo Impellezzere, a resident of Quebec, was arrested and charged with wire fraud in the District of Arizona, while visiting an assisted living facility to meet with an 84-year-old telemarketing fraud victim. Impellezzere allegedly posed as an undercover Canadian police officer, using an alias, and told the victim, who had already lost $80,000 to criminal telemarketers, that he needed another $10,000 from her so that her funds could be traced back to the people who had defrauded her of the $80,000. He was arrested when he arrived after midnight at the victim's assisted-living facility, allegedly to pick up not only her $10,000 but another $7,500 that he had persuaded another victim to wire to her so that he could pick up the funds at the same time.
- February 15, 2001 - Central District of California (Lottery) On February 15,

2001, a federal grand jury in the Central District of California returned an indictment against Jacques Tanguay, Christina Tanguay, Donna Mata, and Wilfred Veyt on wire fraud charges, including the sentencing enhancement for telemarketing fraud, 18 U.S.C. § 2326.[3] Jacques and Christina Tanguay allegedly owned and operated a British Columbia-based lottery operation called, at various times, Global Dividends International, Horizon 2000 Investments International, and Platinum International. Mata and Veyt allegedly managed and were telemarketers in the operation. The indictment alleges that during the course of the scheme, which ran from about November 1997 to May 2000, the defendants induced elderly victims to send more than $2.7 million to the operation.

- February 9, 2001 - District of Massachusetts (Prize-Recovery Room) On February 9, 2001, Postal Inspectors and other U.S. law enforcement agents arrested Denis Morin, a manager of a large Montreal-based telemarketing fraud operation, at Walt Disney World in Florida. In a coordinated series of actions, Canadian law enforcement authorities arrested 26 other people connected with the operation. The room allegedly operated as a recovery room, in which callers falsely represented themselves as government officials, such as IRS and Customs employees and judges, as well as lawyers.[4]

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[3] *See* United States v. Tanguay, No. CR 01-139 (indictment returned Feb. 15, 2001).

[4] *See* Paul Cherry, *Not a Mickey Mouse operation*, Montreal Gazette, Feb. 10, 2001, http://www.montrealgazette.com/news/pages/010210/5151655.html.

Morin has since been indicted in the District of Massachusetts on charges of conspiracy, mail fraud, and wire fraud. The indictment alleges that the operation targeted principally senior citizens and other vulnerable members of society. One of the alleged boiler room managers arrested in Montreal, Vasilios Kolitsidas, is also a fugitive from a federal indictment in the Middle District of Florida.

- February 5, 2001 - Central District of California (Lottery) On February 5, 2001, Joseph M. Polyak was arrested in Blaine, Washington on the basis of a criminal complaint in the Central District of California alleging wire fraud violations. Polyak allegedly conducted a foreign lottery scheme under the names Imperial International Services, Premier International, 591117BC LTD, and ELC Services. The scheme allegedly involves calls to elderly victims from British Columbia. Polyak was subsequently indicted on wire fraud charges, as well as the telemarketing fraud sentencing enhancement. He is scheduled for trial on August 31, 2001.
- January 17, 2001 - Middle District of Florida (Lottery/Money Laundering) On January 17, 2001, a federal jury returned a verdict of guilty against Serges Jacques Descent on all counts of a 57-count indictment, charging him with conspiracy, mail fraud, money laundering conspiracy, and money laundering (18 U.S.C. §§ 1956 and 1957), and including the telemarketing fraud enhancement under 18

U.S.C. § 2326.[5] According to the evidence at trial, in 1998 and 1999 Descent used bank accounts in St. Petersburg, Florida and Canada to channel funds from victims' checks that were sent in response to calls from a lottery room, presumed to be in Canada. Victims named in the indictment included 13 people in their 70s and 80s, and four of those victims were so frail that they could not travel to testify at trial and had their testimony taken by video deposition. Descent is scheduled for sentencing on July 20, 2001. A second defendant, Vasilis Kolitsidas, was a fugitive in this case, but was arrested in Montreal in February, 2001 in connection with the Denis Morin arrest (see above).

- January 10, 2001 - Central District of California (Lottery) On January 10, 2001, a federal grand jury in Los Angeles indicted two Canadian residents, Wilson Okike and Basil Mark Steeves, on 12 counts of wire fraud and six counts of mailing fraudulent materials relating to lotteries. The indictment alleges that Okike and Steeves operated fraudulent telemarketing firms in Vancouver called North Klassen Services, Globallot Services, Royal Flush Ltd., and Intersweeps Management Services. Okike and Steeves had been arrested in Blaine, Washington in December, 2000.[6] Both defendants have since pleaded guilty to

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[5] *See* United States v. Descent, No. 8:00-CR-186-T-30E (M.D. Fla., second superseding indictment returned October, 2000).

[6] U.S. Attorney's Office, Central District of California, Press Release (Jan. 10, 2001), http://www.usdoj.gov/usao/cac/pr2001/004.html.

charges of wire fraud and mailing of lottery materials.

- November 24, 2000 - Central District of California (Lottery) On November 24, 2000, a jury in the Central District of California convicted Eduardo Cartagena on 10 counts of wire fraud. Cartagena had managed boiler rooms in Burnaby, British Columbia, that were part of an operation called, at various times, Global Dividends International, Horizon 2000 Investments International, and Platinum International. The testimony at trial showed that the business name was changed often to avoid detection of the scheme. Cartagena's stepfather and mother, Jacques and Christina Tanguay (see above), owned the operation and also operated a boiler room in Quebec. Cartagena had been arrested in May, 2000, after he entered the United States.[7]

  On May 14, 2001, Cartagena was sentenced to 70 months imprisonment and restitution to victims. The sentence was based in part on the jury's specific finding that Cartagena had defrauded at least 10 victims over the age of 55, which made him eligible for an increased sentence under the section 2326 telemarketing fraud enhancement.

- November 15, 2000 - Western District of Louisiana (Prize) On November 15, 2000, a federal grand jury in the Western District of Louisiana indicted Nelson Guerrero, of British Columbia, on six counts of conspiracy, wire fraud, and money

[7] U.S. Attorney's Office, Central District of California, Press Release (Nov. 24, 2000), http://www.usdoj.gov:80/usao/cac/pr/pr2000/209.htm.

laundering. Guerrero and others allegedly operated a fraudulent telemarketing business in Canada that telephoned victims and promised them a substantial cash prize if they sent payments to cover "taxes" and to convert Canadian currency to U.S. dollars. Guerrero also allegedly used the aliases Nelson Ramirez, Alex Roberto, and Anthony Miranda.[8]

- November 13, 2000 - Central District of California (Lottery) On November 13, 2000, a criminal complaint was filed in the Central District of California against Timothy Ryan Babuin, with respect to his role in a Vancouver telemarketing company, NAGG Holdings. NAGG Holdings allegedly sold bogus lottery tickets and bogus savings bonds to U.S. and Canadian victims.[9] Babuin was arrested in Canada, and an extradition request has been filed with Canadian authorities.
- June 13, 2000 - Central District of California (Credit-Card) On June 13, 2000, a criminal complaint was issued in the Central District of California, charging a Canadian resident, Mark Wilson, with mail, wire, financial institution, and credit-card fraud, after a series of searches and seizures by law enforcement in Canada and the United States. Wilson, doing business as OPCO INTERNATIONAL INC. ("OPCO") and related companies, as well as AMERICAN FRAUD

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[8] U.S. Attorney's Office, Western District of Louisiana, Press Release (Nov. 15, 2000), http://www.usdoj.gov:80/usao/law/news/wdl20001115b.html.

[9] Ministry of Attorney General, Province of British Columbia, Press Release (Dec. 13, 2000).

WATCH SERVICES, INC. ("AFWS"), allegedly operated a fraudulent telemarketing scheme in which U.S. residents were telephonically contacted from Canada in an effort to have those residents disclose their Visa and/or MasterCard numbers to the callers. Those numbers were then billed without authorization for $299.00 each.

Wilson allegedly caused his employees to make the following misrepresentations, among others, to victims: 1) that OPCO was their credit card representative; 2) that the victims were qualified to a "gold star" membership from OPCO, which would entitle them to certain services; and 3) that OPCO needed to verify the victims' credit card number, in order to induce the victim to read their credit card number to the OPCO employee. Wilson allegedly used several different factoring companies to process the credit card charges and, as a result, those companies incurred losses from the excessive charge backs realized. At least one factoring company could not absorb the losses. This reportedly caused a federally insured financial institution to incur losses in excess of $100,000.00.

- May 22, 2000 - Central District of California (Lottery) On May 22, 2000, two Montreal telemarketers, George R. Gilham and Lisa A. Pomerantz were sentenced in the Central District of California to 30 months and 27 months imprisonment, respectively. Pomerantz and Gilham had been arrested in Los Angeles on November 17, 1999, after attempting to pick up $140,000 in cash from an elderly

victim and give her a counterfeit $5.5 million check, purportedly for "lottery winnings." Pomerantz and Gilham reportedly drove from Montreal to Los Angeles for the transaction.[10] After being indicted in December 1999 on mail fraud and related charges,[11] both defendants pleaded guilty in January 2000.

- February 7, 2000 - Central District of California (Lottery) On February 7, 2000, a criminal complaint was issued in the Central District of California, charging Michael Ghirra, of Vancouver, B.C., with wire fraud and mailing lottery communications. Ghirra was the owner and operator of WIN USA (a/k/a International Registration Australian Lottery (IRAL), International Canadian Lottery System, and Ipex Services Ltd.) from approximately April 1997 through November 1998. Ghirra reportedly had obtained approximately $5 million from his lottery operations.

  Ghirra had previously been a defendant in a civil action filed by the FTC on November 7, 1998 concerning his activities with WIN USA and IRAL.[12] That civil action resulted in the granting of the FTC's motion for summary judgment on April 13, 2000.[13]

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[10] *See* U.S. Customs Service, Press Release (Nov. 18, 1999), http://www.customs.gov/hot-new/pressrel/1999/1118-00.htm.

[11] *See* United States v. Gilham and Pomeranz, No. CR 99-1229 (C.D. Cal., Dec. 1999).

[12] *See* FTC v. Win USA Services Ltd., No. C98-1614-Z (W.D. Wash., civil complaint filed November 7, 1998).

[13] *See* Federal Trade Commission, http://www.ftc.gov/ogc/status/injunct4.htm.

In addition to these criminal prosecutions, I want to point out that another component of the Department of Justice, the Office of Foreign Litigation in the Civil Division, plays an important role in certain cross-border fraud litigation. That Office is authorized to file civil proceedings in a foreign jurisdiction where fraudulent activities occur. As a result, it can seek civil remedies in foreign jurisdictions like Canada, including civil injunctions and freezing of individual and corporate assets stemming from a fraudulent scheme that can eventually be paid to the scheme's victims as restitution. For example, in the criminal prosecution of a Canadian gemstone scheme, United States v. Euro-Can-Am et al., the Office of Foreign Litigation brought an action that succeeded in freezing assets in Canada until the defendants reached a global settlement with the U.S. government. The resolution of the prosecution included not only guilty please by defendants, but a $1 million payment to the United States for partial restitution to the scheme's victims.

Finally, through yet another of its components, the Bureau of Justice Assistance, the Department has been providing funding to the National Association of Attorneys General to support its ongoing operational and training efforts in telemarketing fraud cases, including cross-border telemarketing fraud. Over the past three years, more than 500 state and local prosecutors and investigators have attended these training sessions.

B. Recommendation - Regional Task Forces

The Working Group Report also "recognize[d] the usefulness of regional task

forces on telemarketing fraud" and recommended that such task forces "be encouraged to cooperate across the international border to the maximum extent possible."[14] Two related developments have reflected that spirit of cooperation.

First, Canadian authorities have established several regional task forces to address telemarketing fraud in their respective areas. In Montreal, Project Colt, established April 1, 1998, is a multiagency project on telemarketing fraud that is staffed by the RCMP, the Sureté de Québec (Quebec State Police), and the Montreal Urban Community Police. In Toronto, a multiagency task force on telemarketing fraud – established in 2000, following the work of a multiagency consultative committee that had been established in 1997 – includes the Toronto Police Service, the Ontario Ministry of Consumer and Commercial Relations, the Ontario Provincial Police, and the U.S. Federal Trade Commission. In Vancouver, Project Emptor includes investigators from the RCMP, Industry Canada, and the British Columbia Attorney General.

Second, U.S. law enforcement agencies have been actively supporting and augmenting the work of these regional task forces. Since 1999, the FBI has conducted "Operation Canadian Eagle," an FBI operation in which agents from three designated field offices serve on temporary duty in Canada with specific Canadian law enforcement agencies to investigate fraudulent telemarketing. (Agents from the FBI's Boston field office work with Project Colt in Montreal, agents from the FBI's Detroit office work

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[14] Working Group Report, supra note 1, at 28.

with RCMP representatives in Ontario, and agents from the FBI's Los Angeles field office work with Project Emptor.) Other law enforcement agencies, such as the Postal Inspection Service and the Customs Service, also have provided investigators to work with the Canadian task forces.

These support and investigative efforts have already paid substantial dividends for U.S. law enforcement. From May 1999 to May 2001, Operation Canadian Eagle has resulted in the charging of 49 persons by indictment or information, the charging of 13 persons by criminal complaint, and more than $2.2 million in funds that were recovered and returned directly to telemarketing fraud victims. A number of the U.S. criminal cases I have listed above in this statement are the direct result of Canadian Eagle, Project Colt, and Project Emptor, and we look forward to similar cases being generated in the future.

III. Improvements in Cross-Border Cooperation

The Department of Justice believes that the United States has implemented substantially all of the recommendations in the Working Group Report. As the 2000 status report indicates, there are, among other things, enhanced penalties under the Sentencing Guidelines for telemarketing fraud; multiagency investigative support for cooperative projects such as Project Colt and Project Emptor; the extensive resources of the multinational Consumer Sentinel database that the FTC maintains; and expanded telemarketing fraud training for law enforcement.

At the same time, there clearly are some areas where continuing activity by the Department may be needed to enhance cross-border cooperation in telemarketing fraud cases. First, the Department believes that it and the investigative agencies with which it works on telemarketing fraud cases need to continue to devote resources to the problem of cross-border telemarketing fraud. There is no doubt that both U.S. and Canadian authorities have more legal tools, and more collaborative arrangements such as the Canadian regional task forces and Operation Canadian Eagle, to attack cross-border telemarketing schemes effectively than they did when the Working Group issued its 1997 report. Even so, there are still strongholds of telemarketing fraud that will require both countries to continue to use those legal tools and task forces, and to devote investigative and prosecutive resources, if we are to have a decisive effect on this problem.

Second, the Department has noted a need for closer coordination between U.S. and Canadian authorities in assisting U.S. victim-witnesses whose testimony is needed in Canadian judicial proceedings. Changes in Canadian law since 1997 allow the use of videoconferencing to take testimony from telemarketing fraud victims located outside of Canada. As a practical matter, however, even a single request by Canadian authorities for assistance in arranging for video conference testimony by several witnesses can result in substantial logistical problems. The nearest available video conference site for a particular victim may be several hundred miles from the victims' residence. If the victim is physically infirm, he or she may need to be accompanied to and from the video

conference site by a U.S. law enforcement representative. If there is a delay in the Canadian proceeding, the victim may need accommodations and meals at least overnight. Moreover, based on several Canadian cases in which U.S. assistance was requested in recent years, Canadian prosecutors may need as many as two dozen to three dozen victim-witnesses who can testify at a preliminary hearing or trial.

To date, agencies such as the FBI, the Postal Inspection Service, and the Federal Trade Commission have been highly responsive to such requests. Nonetheless, no single agency is, or should be, solely responsible for arranging and carrying out such assistance in all cross-border telemarketing fraud cases. The Department therefore plans to meet with these and other law enforcement agencies, to try to develop a better framework for responding to future requests from Canada for assistance with victim-witnesses in cross-border cases of all types.

Finally, the Department has a continued interest in exploring whether the processes for extradition and mutual legal assistance can be made more efficient and provide results more quickly in cross-border fraud cases. While the Department believes that the existing U.S.-Canada Extradition Treaty and Mutual Legal Assistance Treaty (MLAT) are sound, the time needed to obtain evidence under an MLAT request or to extradite individual defendants has sometimes varied widely, from a few weeks to two years or more. Some delays, of course, are inevitable when criminal defendants avail themselves of all available legal processes to resist extradition. Nonetheless, both countries can benefit by determining how these processes might be made to function more efficiently.

Thank you for the opportunity to appear here today. I will be pleased to take any questions you have.

U.S. Department of Justice

Criminal Division

Washington, D.C. 20530

June 7, 2000

STATUS REPORT ON U.S. IMPLEMENTATION OF RECOMMENDATIONS IN NOVEMBER 1997 REPORT OF THE UNITED STATES - CANADA WORKING GROUP ON TELEMARKETING FRAUD TO PRESIDENT CLINTON AND PRIME MINISTER CHRÉTIEN

1. The governments and agencies of both countries should clearly identify telemarketing fraud as a serious crime.

Status: Continuing

Federal and state authorities have identified, and continue to identify, telemarketing fraud as a serious crime through six principal means: (1) increased penalties for telemarketing fraud-related offenses; (2) the conduct of enforcement operations that affect cross-border telemarketing fraud; (3) the operation and expansion of Consumer Sentinel, a binational consumer complaint database that includes telemarketing fraud complaints; (4) the provision of telemarketing fraud training for law enforcement and regulatory authorities; (5) participation in education and prevention efforts; and (6) public statements by leading federal and state law enforcement and regulatory authorities.

(1) Increased Penalties for Telemarketing Fraud

In criminal cases involving the use of telemarketing, federal legislation first enacted in 1994 (18 U.S.C. § 2326) specifically authorizes the imposition of increased criminal penalties for specified fraud-related offenses: i.e., 18 U.S.C. §§ 1028 (identification fraud), 1029 (credit-card fraud), 1341(mail fraud), 1342 (use of false names in mail fraud), 1343 (wire fraud), 1344 (financial institution fraud), or 18 U.S.C. § 371 (conspiracy) where one of the preceding six offenses was an object of the conspiracy. In implementing these provisions, the United States Sentencing Commission has issued Sentencing Guidelines that authorize federal judges to impose higher sentences where one or more of the following factors are present in cross-border telemarketing fraud prosecutions:

- where the offense was committed through mass-marketing (e.g., telemarketing);
- where the defendant relocated a fraudulent scheme to another jurisdiction to evade law enforcement or regulatory officials, a substantial part of the scheme was conducted from outside the United States, or the offense otherwise involved sophisticated means (e.g.,

locating the main office of a telemarketing scheme in one jurisdiction but locating soliciting operations in another jurisdiction);

- where the defendant knew or should have known that a victim of the offense was a vulnerable victim; and
- where the offense involved large numbers of vulnerable victims.

Similarly, according to the National Association of Attorneys General (NAAG), as of November 1999, statutes in 12 states authorize the imposition of civil penalties, and statutes in six states authorize increased criminal penalties, for cases involving the use of telemarketing or schemes that target older people. (See Attachment I.) At least 17 states also have so-called "do not call" laws: i.e., statutes that authorize civil or criminal penalties for telemarketers who contact people after those people have asked not to be contacted by telemarketers. (See Attachment II.)

(2) Enforcement Operations

Since 1993, the federal government has conducted two major nationwide undercover operations, involving both federal, state, and local law enforcement, that were directed at telemarketing fraud, including cross-border telemarketing schemes. Operation Senior Sentinel, announced in 1995, resulted in the conviction of 598 individuals, the execution of 104 search warrants, and the investigation of 180 telemarketing "boiler rooms." More recently, Operation Double Barrel, announced in 1998, resulted in charges against 795 individuals in 218 federal criminal cases, and charges against 194 individuals in 100 state criminal cases. In addition, Double Barrel involved state civil complaints against 394 individuals, 12 civil actions by the Federal Trade Commission (FTC), five civil actions by the Securities and Exchange Commission (SEC), and two civil actions by the Commodity Futures Trading Commission.

Federal investigative agencies have established closer working relationships with various Canadian law enforcement agencies to pursue cross-border telemarketing fraud cases. Through Operation Canadian Eagle, the FBI is working closely with the RCMP and other Canadian law enforcement representatives in Montreal, Toronto, and Vancouver. The Postal Inspection Service and the U.S. Customs Service also have ongoing collaborations with Canadian law enforcement.

In addition, the Department of Justice has funded demonstration sites in five states (i.e., California, Florida, Georgia, North Carolina, and Vermont) that are dedicated to state, local, and private sector cooperation in combating telemarketing fraud. For example, the demonstration site in the Vermont Attorney General's office is dedicated to developing cooperative cross-border approaches to telemarketing fraud prosecutions, including preparation and transportation of witnesses for appearances in Canadian courts.

These operations, projects, and cases reflect the strength of the commitment by federal, state, and local law enforcement and regulatory agencies in the United States to treat telemarketing fraud as a serious crime.

(3) Consumer Sentinel

As discussed more fully in the status report on Recommendation 11 below, Consumer Sentinel is a binational database of consumer complaints about various types of fraud, including telemarketing fraud. Data from these complaints assist law enforcement and regulatory agencies not only to gather information about particular telemarketing schemes, but to monitor strategic information such as general trends and developments in telemarketing fraud. In calendar year 1999, for example, Consumer Sentinel received approximately 73,750 complaints, of which at least 15 percent were cross-border complaints from U.S. and Canadian consumers.

(4) Telemarketing Fraud Training

Since the Working Group's 1999 meeting, the Department of Justice has expanded training on telemarketing fraud for investigators and prosecutors, through its own training programs and through funding of other training programs. In August, 1999, the Department, in collaboration with the National Association of Attorneys General (NAAG) and the American Prosecutors Research Institute (APRI), conducted a multiple-day training course on telemarketing fraud at the National Advocacy Center (NAC) in Columbia, South Carolina. This course – the first NAC joint training session – included federal, state, and local prosecutors, as well as several Canadian prosecutors.

In addition, since 1997 the Department has provided grants to the NAAG and the APRI for coordinated training of more than 500 state and local investigators and prosecutors from all 50 states, the District of Columbia, four territories, and Canada in the detection, investigation, and prosecution of telemarketing fraud. These latter training sessions have been arranged by region to promote cooperation between and among neighboring states and countries. The NAAG also has developed a telemarketing fraud-based trial advocacy training course that has been given to assistant attorneys general in nine states. The NAAG plans to offer this training on a regional basis during 2000 and 2001.

All of these training sessions and courses, have highlighted a variety of issues associated with cross-border investigation and the need for cross-border cooperation. Cross-border issues are expected to assume an even greater role in future telemarketing fraud training sessions.

(5) Telemarketing Fraud Education and Prevention

As further described below in the status report on Recommendation 10, the Department of Justice and other law enforcement and regulatory agencies have been substantially involved in education and prevention projects relating to telemarketing fraud.

(6) Public Statements

Senior officials of the Department of Justice, the Federal Trade Commission, and attorney general offices have continued to emphasize the importance of telemarketing fraud in white-collar crime and fraud enforcement. Copies of press releases and related information are available on the Internet at Web sites such as www.usdoj.gov/criminal/fraud/telemarketing/index.htm [Department of Justice], www.usdoj.gov/usao/eousa/usa_pressrel.html [U.S. Attorneys], www.ftc.gov/ftc/news.htm [FTC], and www.naag.org [NAAG].

2. Both countries should explore the use of remote testimony in criminal proceedings, by video-teleconferencing or similar means, to reduce costs.

Status: In Progress

Federal procedural and evidence laws permit the use of videoconferencing to obtain remote testimony in legal proceedings. Federal and state agencies have been assisting Canadian law enforcement authorities in arranging for U.S. victim-witnesses to provide remote testimony by videoconference. These efforts have included the compilation of information from federal agencies, state attorneys general, and other sources about available sites to which telemarketing fraud victims could be directed to provide testimony for use in Canadian proceedings. The United States is monitoring efforts to implement the initial requests that Canadian authorities have made for assistance with videoconferencing, as there may be substantial logistical issues associated with the scheduling of videoconference links and the transportation of victims to and from the video sites.

3. The legal and technical potential and limits of electronic surveillance as a tool against telemarketing fraud should be explored further.

Status: Completed

Federal law generally permits the conduct of electronic surveillance in telemarketing fraud cases without a court order when one party to the conversation (e.g., a law enforcement agent, or private persons acting under law enforcement supervision) consents to the surveillance. Federal law also authorizes the conduct of electronic surveillance in criminal telemarketing fraud investigations with prior judicial authorization when no party has given prior consent. Certain states also authorize court-ordered electronic surveillance in telemarketing fraud cases.

Federal, state, and local criminal law enforcement agencies, as well as agencies such as the CFTC, the FTC, and the SEC, have found tape recordings of consensually monitored phone conversations with fraudulent telemarketers to be highly probative in enforcement proceedings. The National Tape Library (see item 11 below) has a collection of nearly 16,000 tape recordings of this type, which are made available to U.S. and Canadian law enforcement and regulatory agencies. Recordings of telephone conversations made pursuant to federal court order have also

had substantial probative value in federal criminal prosecutions of telemarketers. It would be useful to explore with Canadian prosecutors the extent to which such tapes, if made in conformity with U.S. law, can be and are being used as evidence in Canadian telemarketing fraud proceedings.

4. Both governments should examine the regulation of telephone services and options for denying telephone services to telemarketing offenders.

Status: In Progress

Current legislation (18 U.S.C. § 1084(d)) authorizes a common carrier to deny or terminate telephone service only when telephone facilities are being used to transmit or receive gambling information in violation of U.S. law. The U.S. Department of Justice has submitted to Congress a bill that includes a provision that would authorize the Department to seek court orders to block or terminate telephone service to numbers being used for the conduct of telemarketing fraud. (See Attachment III.)

5. The scope of the existing mutual legal assistance arrangements should be considered to determine whether they might be expanded to deal more effectively with telemarketing-fraud cases.

Status: In Progress

MLAT issues continue to warrant attention. Cross-border telemarketing fraud investigations often need information that can be obtained only by MLAT. The documentary evidence, including bank and telephone records, that is sought under the MLAT for telemarketing fraud investigations is often essential to bringing U.S. criminal charges that fully address the scope and extent of the telemarketing schemes.

U.S. authorities have noted that certain investigations have been substantially delayed by investigative subjects who challenge the transfer of MLAT-requested materials to U.S. authorities. U.S. authorities therefore encourage an examination of the MLAT process by appropriate authorities in both countries, to identify steps that could accelerate the MLAT process, such as providing dates for compliance in production orders and utilizing interim sending orders. Often the transmittal of vital documents, by judicial sending order, is delayed until all responsive documents are produced. The United States recognizes that legal challenges can prolong the MLAT process, but MLAT requests often take many months when there is no litigation.

6. Both governments should clarify the circumstances under which mutual legal assistance requests are needed, by providing information and advice to the agencies involved.

Status: Continuing

U.S. law enforcement authorities (i.e., including federal, state, and local authorities) have incorporated information about MLAT requests into training provided at the National Advocacy Center, the FBI Academy, and special training sessions that the National Association of Attorneys General and the American Prosecutors Research Institute organized. This information will be updated in future training sessions of this type. The NAAG has also included information about MLAT requests in a handbook that it prepared and distributed to the International Coordinators in each state attorney general's office. The NAAG handbook will also be made available nationwide to federal law enforcement through the Department of Justice's Intranet.

7. Extradition arrangements should be examined, and if possible modified, to facilitate and accelerate extradition in telemarketing fraud cases.

Status: Continuing

The United States welcomes, and is making use of, the changes in Canadian legislation that expedite extradition requests by eliminating the requirement of first-person, nonhearsay affidavits to support such requests. The United States has found no provision in federal extradition-related legislation that needs modification for more expeditious handling of telemarketing fraud cases. It may be useful to maintain continuing communication between the United States and Canada on any judicial challenges to the Canadian legislation as they arise, and on further modifications to extradition arrangements that may be necessary.

United States authorities are concerned about delays in the commencement of extradition proceedings after a formal extradition request is made. In at least one significant U.S. telemarketing prosecution, an extradition request that was forwarded by the International Assistance Group to the relevant province has had no action taken for a year.

8. Federal deportation laws which might apply to foreign nationals engaging in telemarketing fraud should be reviewed, and enforcement agencies be given information about when deportation may be an option.

Status: Completed

In 1998, the Immigration and Naturalization Service (INS) prepared a memorandum concerning U.S. deportation laws applicable to foreign nationals. The memorandum was shared with U.S. enforcement agencies.

9. Research should be conducted into offenders, victims and other aspects of telemarketing fraud to create effective educational materials and strategies to prevent it.

Status: Completed

Since 1995, the AARP has conducted a variety of surveys, focus groups, and studies to understand the process by which people become telemarketing fraud victims, and has drawn on that research in developing public-service advertisements and educational materials on telemarketing fraud. The results of these surveys, focus groups, and studies are publicly available through the AARP.

10. Governments and agencies should cooperate as closely as possible in developing, maintaining and disseminating educational materials, and in coordinating education and prevention efforts.

Status: Continuing

The Department of Justice, the FBI, the Postal Inspection Service, the Secret Service, the Federal Trade Commission, other law enforcement and regulatory agencies, and the NAAG have cooperated with the AARP and other private-sector organizations in conducting a variety of education and prevention projects on telemarketing fraud. For example, in December 1999, the Postal Inspection Service, in collaboration with numerous government and private-sector organizations (e.g., the Council of Better Business Bureaus, the Department of Justice, the FBI, and the NAAG), announced Project kNOw Fraud. kNOw Fraud was a telemarketing fraud public education initiative of unprecedented scope, involving the mailing of postcards to more than 120 million households in the United States with information about how to tell when telemarketers may be fraudulent and where and how to file complaints. The FTC and the Postal Inspection Service have worked together to make the kNOw Fraud complaints available to both U.S. and Canadian enforcement authorities through the binational Consumer Sentinel database.

U.S. law enforcement agencies also have participated in nearly four dozen "reverse boiler rooms" (i.e., events in which law enforcement representatives and volunteers call persons listed on fraudulent telemarketers' lists of prospective victims and provide information about telemarketing fraud). These reverse boiler rooms, in which the AARP has played a leading role, have reached many thousands of consumers in the United States and Canada.

The Department of Justice's Office for Victims of Crime has provided funding for a variety of projects related to prevention and education on telemarketing fraud. These include an Oregon-based program directed at financial exploitation of older people; a project on telemarketing fraud directed at Latino elderly; a four-state program on telemarketing fraud prevention; and a Baltimore County (Maryland) project to produce a booklet on telemarketing fraud. In addition, the Department's Bureau of Justice Assistance has funded the five telemarketing fraud demonstration-site projects described above in the status report on Recommendation 1, as well as public-education projects that the NAAG has conducted.

U.S. law enforcement agencies also regularly disseminate information on telemarketing fraud developments through various mechanisms. The Department of Justice chairs a national-level Telemarketing and Internet Fraud Working Group that meets quarterly to exchange information on legal and investigative developments (e.g., Sentencing Guidelines issues and judicial decisions). The NAAG publishes a bi-monthly Telemarketing Fraud Bulletin. The Bulletin, which is sent to more than 700 enforcement agency representatives, highlights state, local, and federal enforcement and legislative and educational initiatives.

In addition, Consumer Sentinel regularly publishes *FraudBusters!*, a newsletter available only to Consumer Sentinel members. Each *FraudBusters!* Issue includes Consumer Sentinel statistics and articles that describe new scams, recent law enforcement actions, and new programs such as the FTC's Identity Theft program. The FTC also periodically circulates by e-mail the Cross-Border Chronicle, which includes summaries of noteworthy cases, announcements of upcoming events, legislative and regulatory updates, and Consumer Sentinel statistics.

11. Strategies to control telemarketing fraud should be coordinated between the United States and Canada at the agency, regional and national levels.

Status: Continuing

The Department of Justice and federal investigative agencies have maintained regular contacts with various Canadian law enforcement agencies, at policy and operational levels, for coordination of strategies directed at telemarketing fraud. For example, multiple U.S. law enforcement and regulatory agencies have participated in a February 2000 meeting in Toronto on cross-border telemarketing fraud.

Two information databases available in the United States have played a particularly significant role in fostering coordination of investigative strategies between U.S. and Canadian enforcement and regulatory agencies: i.e., Consumer Sentinel, a binational database of telemarketing and Internet fraud complaints; and the National Tape Library.

(1) Consumer Sentinel

The Consumer Sentinel database is a joint project of the FTC and the NAAG, in conjunction with Canadian partners CANSHARE and PhoneBusters. At present, the database contains more than 250,000 complaints from consumers in the United States, Canada, and other countries about fraud schemes that use telemarketing, direct mail, and the Internet.

Consumer Sentinel serves as a central repository of telemarketing fraud complaints for U.S. and Canadian law enforcement agencies. Currently, at least 232 U.S. and 13 Canadian law enforcement agencies are members of Consumer Sentinel, including all the state attorneys general, various U.S. Attorneys' offices, the FBI, the IRS, the U.S. Postal Inspection Service, the Internal

Revenue Service, the RCMP, Industry Canada, the Ontario Ministry of Consumer and Commercial Relations, and the Toronto Police Service.

The complaints aggregated in Consumer Sentinel are initially collected by a number of entities and then forwarded to and aggregated by the FTC. PhoneBusters has very effectively managed and aggregated Canadian complaints and transmitted them to the FTC for inclusion in Consumer Sentinel. Complaints made directly to the FTC are received at the Consumer Response Center, where counselors enter telephone complaints directly into the database. Complaints mailed to the FTC are also entered. Since 1998, consumers have been able to submit online internet fraud and telemarketing fraud complaints at www.ftc.gov. Using Consumer Sentinel data, U.S. and Canadian law enforcers have investigated and successfully prosecuted a variety of telemarketing fraud schemes. The U.S. Postal Inspection Service and Canadian police authorities, for example, have used detail reports from Consumer Sentinel data to investigate and prosecute advance-fee loan scams in Canada.

(2) National Tape Library

The National Tape Library is a project based in San Diego, California that involves the collection, indexing, and copying of consensual recordings of telephone conversations with possibly fraudulent telemarketers, for investigative and enforcement use by law enforcement and regulatory agencies. The Tape Library, which currently has nearly 16,000 tapes, is supervised by a Steering Committee that includes representatives of the Department of Justice, the FBI, the FTC, the NAAG, the NAAG Telemarketing Task Force, and the U.S. Attorney's Office in San Diego. The Tape Library's indexes allow investigators to determine whether the same individual, or individuals with the same telemarketing operation, made calls from a specific location. These and other features make the Tape Library highly useful for law enforcement or regulatory agencies investigating telemarketing fraud in the United States and Canada.

12. An ongoing binational working group should serve as an overall coordinator and deal with national and binational telemarketing fraud issues as they arise.

Status: Continuing

Since 1997, the Working Group has met annually to review progress and identify issues of interest in telemarketing fraud enforcement and prevention activities. More specific coordination on operational issues has been handled by agencies involved in particular investigations.

13. Regional task-forces should be encouraged to cooperate across the international border to the maximum extent possible.

Status: Continuing

Through operations such as Operation Canadian Eagle, Project Emptor, and specific investigations of fraudulent telemarketers, U.S. and Canadian law enforcement and regulatory agencies have substantially expanded cooperation on the investigation of cross-border telemarketing fraud schemes. U.S. law enforcement and regulatory agency representatives work closely with Canadian counterparts in areas such as Montreal, Toronto, and Vancouver.

In addition, the Federal Trade Commission, the Competition Bureau of Industry Canada, the Ontario Ministry of Consumer and Commercial Relations, and the Toronto Police Service have signed a memorandum of understanding forming a joint venture to enforce deceptive marketing practices laws. Through the joint venture, the parties will coordinate various law enforcement actions and cooperate in investigating fraudulent telemarketing schemes by firms in Ontario that target U.S. consumers and firms in the United States that target Ontario consumers.

State authorities also are taking steps to improve cooperation and coordination on cross-border telemarketing fraud. The NAAG has recently established a Cross-Border Committee, to be co-chaired by three state attorneys general, to address various issues of cross-border concern, including telemarketing fraud. In addition, attorneys general in several states have established direct contact and working relationship with provincial authorities in Canada to deal more effectively with cross-border telemarketing schemes.

14. To further coordination, governments and agencies should examine privacy and other laws relevant to cross-border shared access information systems with a view to expanding access to such systems to the maximum extent possible.

Status: Continuing

The FTC has continued to expand Consumer Sentinel to make it more useful to U.S. and Canadian law enforcement and regulatory agencies that investigate telemarketing fraud. In its contacts with Canadian authorities, however, the FTC has noted some concerns about restrictions on the sharing of information by Canadian authorities with U.S. authorities. Canadian authorities have explained that: (1) except under limited circumstances, Article 29 of the Competition Act prohibits sharing with U.S. enforcement authorities both non-public information obtained under certain provisions of the Act and the identity of persons from whom information was obtained; and (2) Canadian officials who violate the disclosure provision are subject to criminal liability. Article 29 therefore appears to create significant impediments to cooperation and information sharing between Canadian and U.S. authorities. In addition, because Article 29's statutory language on information-sharing is ambiguous and there may be criminal liability for improper disclosure, the interpretation that most restricts sharing tends to be followed.

Attachments

UNITED STATES - CANADA WORKING GROUP ON TELEMARKETING FRAUD
SUMMARY OF STATUS REPORT ON U.S. IMPLEMENTATION OF
RECOMMENDATIONS IN NOVEMBER 1997 REPORT
[JUNE 7, 2000]

No.	Recommendation	Status	Summary Explanation
1	Governments and agencies of both countries should clearly identify telemarketing fraud as a serious crime.	Continuing	Federal and state authorities have identified, and continue to identify, telemarketing fraud as a serious crime through six principal means: (1) increased penalties for telemarketing fraud-related offenses; (2) the conduct of enforcement operations that affect cross-border telemarketing fraud; (3) the operation and expansion of Consumer Sentinel; (4) the provision of telemarketing fraud training for law enforcement and regulatory authorities; (5) participation in education and prevention efforts; and (6) public statements by leading law enforcement and regulatory authorities.
2	Both countries should explore the use of remote testimony in criminal proceedings, by video-teleconferencing or similar means, to reduce costs.	In Progress	Federal procedural and evidence laws permit the use of videoconferencing to obtain remote testimony in legal proceedings. Federal and state agencies have been assisting Canadian law enforcement authorities in arranging for U.S. victim-witnesses to provide remote testimony by videoconference. The United States is monitoring efforts to implement the initial requests that Canadian authorities have made for assistance with videoconferencing, as there may be substantial logistical issues associated with the scheduling of videoconference links and the transportation of victims to and from the video sites.

No.	Recommendation	Status	Summary Explanation
3	The legal and technical potential and limits of electronic surveillance as a tool against telemarketing fraud should be explored further.	Completed	Federal law permits the conduct of electronic surveillance in telemarketing fraud cases without a court order when one party to the conversation (e.g., law enforcement, or private persons acting under law enforcement supervision) consents to the surveillance. Federal law also authorizes the conduct of electronic surveillance in telemarketing fraud cases with prior judicial authorization when no party has given prior consent. Certain states also authorize court-ordered electronic surveillance in telemarketing fraud cases.
4	Both governments should examine the regulation of telephone services and options for denying telephone services to telemarketing offenders	In Progress	Current legislation (18 U.S.C. § 1804(d)) authorizes a common carrier to deny or terminate telephone service only when telephone facilities are being used to transmit or receive gambling information in violation of U.S. law. The U.S. Department of Justice has submitted to Congress a bill that includes a provision that would authorize the Department to seek court orders to block or terminate telephone service to numbers being used for the conduct of telemarketing fraud.
5	The scope of the existing mutual legal assistance arrangements should be considered to determine whether they might be expanded to deal more effectively with telemarketing-fraud cases.	In Progress	MLAT issues continue to warrant attention, as cross-border telemarketing fraud investigations often need information that can be obtained only by MLAT. Certain investigations have been substantially delayed because of delays in transfer of MLAT-requested materials to U.S. authorities. U.S. authorities encourage an examination of the MLAT process by appropriate authorities in both countries, to identify steps that could accelerate the MLAT process, such as providing dates for compliance in production orders and utilizing interim sending orders.

No.	Recommendation	Status	Summary Explanation
6	Both governments should clarify the circumstances under which mutual legal assistance requests are needed, by providing information and advice to the agencies involved.	Continuing	U.S. law enforcement authorities have incorporated information about MLAT requests into training provided at the National Advocacy Center, the FBI Academy, and special training sessions that the National Association of Attorneys General and the American Prosecutors Research Institute organized. This information will be updated in future training sessions of this type.
7	Extradition arrangements should be examined, and if possible modified, to facilitate and accelerate extradition in telemarketing fraud cases.	Continuing	The United States welcomes, and is making use of, the changes in Canadian legislation that expedite extradition requests by eliminating the requirement of first-person, nonhearsay affidavits to support such requests. The United States has not identified any particular provisions in federal extradition-related legislation that requires modification to handle telemarketing fraud cases more expeditiously. It may be useful to maintain continuing communication between the United States and Canada on any judicial challenges to the Canadian legislation as they arise, and on further modifications to extradition arrangements that may be necessary. In addition, U.S. authorities are concerned about delays in the commencement of extradition proceedings after a formal extradition request is made.
8	Federal deportation laws which might apply to foreign nationals engaging in telemarketing fraud be reviewed, and enforcement agencies should be given information about when deportation may be an option.	Completed	In 1998, the Immigration and Naturalization Service (INS) prepared a memorandum concerning U.S. deportation laws applicable to foreign nationals. The memorandum was shared with U.S. enforcement agencies.

No.	Recommendation	Status	Summary Explanation
9	Research should be conducted into offenders, victims and other aspects of telemarketing fraud to create effective educational materials and strategies to prevent it.	Completed	Since 1995, the AARP has conducted a variety of surveys, focus groups, and studies to understand the process by which people become telemarketing fraud victims, and has drawn on that research in developing public-service advertisements and educational materials on telemarketing fraud. In addition, the U.S. Department of Justice has provided funding for a variety of projects related to prevention and education on telemarketing fraud.
10	Governments and agencies should cooperate as closely as possible in developing, maintaining and disseminating educational materials, and in coordinating education and prevention efforts.	Continuing	The Department of Justice, the FBI, the Postal Inspection Service, the Secret Service, the Federal Trade Commission, other law enforcement and regulatory agencies, and the NAAG have cooperated with the AARP and other private-sector organizations in conducting a variety of education and prevention projects on telemarketing fraud. These include the Postal Inspection Service's Project kNOwFraud and "reverse boiler rooms" (i.e., events in which law enforcement representatives and volunteers call persons listed on fraudulent telemarketers' lists of prospective victims and provide information about telemarketing fraud), public-service advertisements, and brochures.
11	Strategies to control telemarketing fraud should be coordinated between the United States and Canada at the agency, regional and national levels.	Continuing	The Department of Justice, federal investigative agencies, and several state attorneys general have maintained regular contacts with various Canadian law enforcement agencies, at policy and operational levels, for coordination of strategies directed at telemarketing fraud. U.S. agencies have also participated in a February 2000 meeting in Toronto on cross-border telemarketing fraud.

No.	Recommendation	Status	Summary Explanation
12	An ongoing binational working group should serve as an overall coordinator and deal with national and binational telemarketing fraud issues as they arise.	Continuing	Since 1997, the Working Group has met annually to review progress and identify issues of interest in telemarketing fraud enforcement and prevention activities.
13	Regional task-forces should be encouraged to cooperate across the international border to the maximum extent possible.	Continuing	Through operations such as Operation Canadian Eagle and specific investigations of fraudulent telemarketers, U.S. and Canadian law enforcement and regulatory agencies have substantially expanded cooperation on the investigation of cross-border telemarketing fraud schemes. U.S. law enforcement representatives work closely with Canadian counterparts in areas such as Montreal, Toronto, and Vancouver. In addition, the Federal Trade Commission, the Competition Bureau of Industry Canada, the Ohio Attorney General, and the Ontario Ministry of Consumer and Commercial Relations, and the Toronto Police Service have formed a joint venture to cooperate in investigating fraudulent telemarketing schemes operating between Ontario and the United States.
14	To further coordination, governments and agencies should examine privacy and other laws relevant to cross-border shared access information systems with a view to expanding access to such systems to the maximum extent possible.	Continuing	The Federal Trade Commission has continued to expand the binational Consumer Sentinel system to make it more useful to U.S. and Canadian law enforcement and regulatory agencies that investigate telemarketing fraud. Article 29 of the Competition Act appears to create significant impediments to information-sharing by Canadian authorities with U.S. authorities.

PREPARED STATEMENT OF

THE FEDERAL TRADE COMMISSION ON

"CROSS-BORDER FRAUD"

Before the

SUBCOMMITTEE ON

INVESTIGATIONS

of the

COMMITTEE ON GOVERNMENTAL AFFAIRS,

U.S. SENATE

Washington, D.C.

June 15, 2001

I. Introduction

Mr. Chairman, I am Hugh Stevenson of the Federal Trade Commission's Bureau of Consumer Protection. The Federal Trade Commission is pleased to provide testimony today on its work on the subject of cross-border fraud, focusing on telemarketing fraud perpetrated against U.S. consumers by Canadian telemarketers, which has grown to be a serious problem.[1] This testimony describes the scope of this problem, and the complaint database and intelligence tool–*Consumer Sentinel* -that is a key source of information about this problem. We then summarize our approach to combating the problem through law enforcement and cooperative ventures, and discuss how we can make further progress in the future.

Several weeks ago, the FTC testified about Internet fraud before a House Subcommittee and noted the challenges posed when Internet scams cross borders.[2] Telemarketing scams crossing borders pose similar challenges:

> "[M]any fraud operators are able to strike quickly, victimize thousands of consumers in a short period of time, and disappear nearly without a trace."[3]

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[1] The views expressed in this statement represent the views of the Commission. My oral statement and responses to any questions you may have are my own.

[2] *Hearing on Internet Fraud Before the Subcomm. on Commerce, Trade, and Consumer Protection of the House Comm. on Energy and Commerce,* 107th Cong. (2001) (Statement of the Federal Trade Commission, presented by Eileen Harrington, Associate Director of the Division of Marketing Practices, Bureau of Consumer Protection).

[3] *Id.*

> In addition to fraud proceeds moving off-shore quickly, fraudulent . . . operators may be beyond the reach of the Commission and U.S. courts, practically, if not legally. There is now limited recognition of civil judgments from country to country. Even if the Commission were to bring an action and obtain a judgment against a foreign firm that has defrauded U.S. consumers, the judgment might be challenged in the firm's home country, and the ability to collect any consumer redress might be frustrated.[4]

To combat cross-border telemarketing fraud, as with cross-border Internet fraud, "law enforcement must look for more effective cross-border legal remedies, and must work cooperatively with law enforcement and consumer protection officials in other countries."[5]

The FTC has developed the ability to move quickly against domestic fraud, halting scams and recovering money.[6] Pursuing those who victimize U.S. consumers from abroad is important as well, both to address the substantial harm foreign telemarketers now cause and to develop an approach to combating fraud in the emerging global marketplace.

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[4] *Id.*

[5] *Id.*

[6] For example, the FTC regularly reviews complaint data to spot emerging problems and has brought some cases mere days after detecting fraudulent activity. *See, e.g., FTC v. Benoit*, No. 3:99 Civ. 181 (W.D.N.C. 1999) (just over a week from initial complaints to filing), and *FTC v. Verity Int'l Ltd.*, No. 00 Civ. 7422 (S.D.N.Y. filed Oct. 2, 2000) (filing accomplished in about three weeks).

II. The FTC's Authority and *Consumer Sentinel* Fraud Database

A. The FTC's Law Enforcement Authority

The FTC is the federal government's principal consumer protection agency, with broad jurisdiction extending over nearly the entire economy, including business and consumer transactions on the telephone, the Internet, and elsewhere.[7]

The Federal Trade Commission Act's mandate is to prohibit unfair or deceptive acts or practices and to promote vigorous competition in the marketplace.[8] The FTC Act authorizes the Commission to halt deception in several ways, including through civil actions filed by its own attorneys in federal district court.[9] Typically, these court actions seek preliminary and permanent injunctions to halt deceptive activity, as well as redress for injured consumers.[10] Where redress is

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[7] The FTC has limited or no jurisdiction over some specified types of entities and activities that are regulated by other parts of the government. These include banks, savings associations, and federal credit unions; regulated common carriers; air carriers; non-retail sales of livestock and meat products under the Packers and Stockyards Act; certain activities of nonprofit corporations; and the business of insurance. *See, e.g.,* 15 U.S.C. §§ 44-46 (FTC Act); 15 U.S.C. § 21 (Clayton Act); 7 U.S.C. § 227 (Packers and Stockyards Act); 15 U.S.C. § 1011-1015 (McCarran-Ferguson Act).

[8] 15 U.S.C. § 45(a).

[9] 15 U.S.C. §§ 45(a), 53(b).

[10] The second proviso of Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the Commission to seek injunctive relief to enjoin violations of Section 5(a): "*Provided further,* That in proper cases the Commission may seek, and after proof, the court may issue, a permanent injunction . . . ." *See also FTC v. Evans Products Co.,* 775 F.2d 1084, 1087 (9th Cir. 1985). Once Congress has invoked the equitable power of the federal courts, the full breadth of a court's authority is available, including such ancillary final relief as rescission of contracts and restitution. *FTC v. World Wide Factors, Ltd.,* 882 F.2d 344, 346-7 (9th Cir. 1989); *FTC v. H.N. Singer,* 668 F.2d 1107, 1113 (9th Cir. 1982); *see also Mitchell v. Robert DeMario Jewelry, Inc.,* 361 U.S. 288, 291-92 (1960). Further, a court may grant a preliminary injunction, and whatever additional preliminary relief is necessary to preserve the possibility of final effective ultimate

(continued...)

impracticable, FTC consumer protection actions generally seek disgorgement to the U.S. Treasury of defendants' ill-gotten gains.

The Telemarketing and Consumer Fraud and Abuse Prevention Act[11] also gives the FTC specific powers to combat telemarketing fraud. The 1995 Telemarketing Sales Rule ("TSR" or "the Rule"),[12] implementing the Act, requires telemarketers to identify themselves and accurately describe goods or services offered.[13] The TSR also specifically addresses the most common forms of telemarketing fraud. For instance, the Rule takes aim at deceptive sweepstakes promotions by requiring telemarketers to disclose before payment that "no purchase or payment is necessary to be able to win a prize or participate in a prize promotion."[14] The TSR also makes it a deceptive practice to misrepresent "[a]ny material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion."[15] In addition, the TSR deals with advance-fee loans by defining as an abusive telemarketing practice "[r]equesting or receiving payment of any fee or consideration in advance of obtaining a loan or

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[10] (...continued)
relief. *H.N. Singer*, 668 F.2d at 1111-12.

[11] 15 U.S.C. § 6101.

[12] 16 C.F.R. 310 (1995).

[13] 16 C.F.R. § 310.4(d)(1), (3).

[14] 16 C.F.R. § 310.4(d)(4).

[15] 16 C.F.R. § 310.3(a)(2)(v).

other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person."[16]

The FTC Act also gives the agency jurisdiction over cross-border consumer transactions. Section 5(a) of the FTC Act gives the Commission authority to prohibit unfair or deceptive acts or practices "in or affecting commerce."[17] Section 4 of the FTC Act defines "commerce" to include that "among the several States or with foreign nations."[18] The Commission's jurisdiction for FTC Act violations extends to the TSR, which the Commission can enforce "in the same manner, by the same means, and with the same jurisdiction, powers, and duties" it has under the FTC Act.[19] The Commission has enforced the TSR against Canadian telemarketers calling into the U.S.[20]

B. *Consumer Sentinel*

A cornerstone of the FTC's ability to act quickly and effectively against telemarketing fraud is its access to up-to-date consumer complaint information. In late 1997, the FTC established *Consumer Sentinel* as a web-based law enforcement network. That network provides law enforcement agencies in the United States, Canada and Australia with secure, password-

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[16] 16 C.F.R. § 310.4(a)(4).

[17] 15 U.S.C. § 45(a)(2).

[18] 15 U.S.C. § 44.

[19] 15 U.S.C. § 6105(b).

[20] *See, e.g., FTC v. Growth Plus Int'l Marketing, Inc.*, No. 00C-7886 (N.D. Ill. filed December 18, 2000); *FTC v. 9013-0980 Quebec Inc.*, Civ. No. 1:96CV-1567 (N.D. Ohio filed July 18, 1996); *and FTC v. Ideal Credit Referral Services Ltd.*, C96-0874R (W.D. Wash. filed June 5, 1996).

protected access to more than 300,000 consumer complaints about telemarketing, direct mail, and Internet fraud.[21] Law enforcement agencies and private organizations contribute consumer complaints to a database that is searchable by such criteria as the name, address and telephone number of a firm, the type of fraud, and the country and state or province of the consumer. The National Association of Attorneys General, the National Consumers League, Better Business Bureaus, the U.S. Postal Inspection Service, and Canada's Phonebusters are leading partners with the FTC in this project.

One part of *Consumer Sentinel,* which is accessible only to law enforcement officials, provides consumer complaint data and other intelligence about particular wrongdoers.[22] More than 320 law enforcement agencies have signed up for access,[23] which enables users to share

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[21] This system is an expansion of the earlier NAAG-FTC Telemarketing Complaint System.

[22] For instance, *Consumer Sentinel* allows members to submit an "Auto Query" search on scams or possible targets, which allows them to get an e-mail notice whenever responsive new complaints are entered in the database.

[23] Law enforcement agencies that have signed up for access include a number of federal agencies with which we have had close working relationships, such as the Federal Bureau of Investigation, the Postal Inspection Service, the Secret Service, the Securities and Exchange Commission, and the Commodity Futures Trading Commission. They also include State Attorneys General, local district attorneys, and sheriffs, as well as the following Canadian authorities: Alberta Municipal Affairs, Housing & Consumer Affairs Division; Alberta Securities Commission; British Columbia Gaming, Audit & Investigation Office; British Columbia Ministry of Attorney General; Competition Bureau, Industry Canada; Edmonton, Alberta Police Service; New Brunswick Attorney General; North West Territory Community Operations; Ontario Ministry of Consumer & Commercial Relations; Ontario Provincial Police, Anti-Rackets Section; Ontario Waterloo Regional Police; Royal Canadian Mounted Police (RCMP); Vancouver, British Columbia Police Department; and Toronto Police Department.

information, avoid duplication of efforts, and formulate rapid responses to new fraud schemes.[24] In addition to the site available only to law enforcers, *Consumer Sentinel* now also has a public website[25] that provides general statistics about fraud and identity theft. Accompanying this testimony as an appendix is a statistical report on cross-border fraud, which is an example of the kind of trend data that this joint project can produce.

Building on the success of *Consumer Sentinel*, and as part of its overall strategy to combat cross-border fraud, the FTC recently unveiled *econsumer.gov* in conjunction with 12 other countries.[26] This pilot project will allow law enforcers from around the world to access a database of consumer complaints specifically about cross-border Internet transactions.

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[24] In addition, *Consumer Sentinel* gives members the ability to search the National Tape Library, a clearinghouse of undercover tape recordings of telemarketing sales calls, and to make a tape request online; it also provides an Internet resource bookmark list, a library of telemarketing pleadings, newsletters, and other information useful to law enforcers.

[25] http://www.consumer.gov/sentinel.

[26] The FTC and 12 partners from other countries launched econsumer.gov at the last meeting of the International Marketing Supervision Network (IMSN) on April 24, 2001. The IMSN is a membership organization consisting of the consumer protection authorities of 29 countries, and representatives from the European Commission and the Organisation for Economic Cooperation and Development (OECD). Most IMSN member countries are OECD members. The main objective of the IMSN is to facilitate practical action to prevent and redress deceptive marketing practices with an international component. The IMSN fosters cooperative efforts to tackle consumer problems connected with cross-border transactions in both goods and services. It facilitates the exchange of information among the participants for mutual benefit and understanding.

The other participating IMSN countries are Australia (Australian Competition and Consumer Protection Commission), Canada (Competition Bureau, Industry Canada), Denmark (Danish Consumer Ombudsman), Finland (Finnish Consumer Ombudsman), Hungary (Hungarian General Inspectorate for Consumer Protection), Korea (Korea Consumer Protection Board), Mexico (Procuraduria Federal del Consumidor), New Zealand (New Zealand Ministry for Consumer Affairs), Norway (Norwegian Consumer Ombudsman), Sweden (Swedish Consumer Ombudsman), Switzerland (State Secretariat for Economic Affairs of Switzerland), and the United Kingdom (Office of Fair Trading).

Consumers worldwide can visit the econsumer.gov website and use one of four languages (English, French, German, and Spanish) to enter e-commerce complaints about foreign companies.[27] Law enforcement agencies from participating countries will have access to the complaints through a password-protected website. This site also will allow government officials to communicate with consumer protection law enforcers from other countries, to notify each other of ongoing investigations, and to receive information about recent actions. In addition to an online complaint form, the public econsumer.gov site will provide important consumer information (for example, tips for shopping safely online) as well as contact information for consumer protection agencies in IMSN countries.

III. The Nature and Causes of Cross-Border Telemarketing Fraud

A. Magnitude, Growth, and Geographical Distribution of Canadian Telemarketing

Cross-border telemarketing fraud is a serious problem and appears to be growing. Last year, 71% of the cross-border complaints collected in *Consumer Sentinel*–more than 8,300 of them–were by U.S. consumers against Canadian companies. Appendix, p. 2.[28] Such U.S. consumer complaints accounted for reported dollar losses of $5.3 million in 1999, $19.5 million in 2000, and a projected $36.5 million in 2001 based on complaints we have received during the

[27] The online complaint form accommodates international address information and foreign currencies.

[28] A large percentage of these cross-border complaints are contributed to *Consumer Sentinel* by Canada's Project Phonebusters.

first part of the year. Appendix, p. 3.[29] The percentage of reported complaints and percentage of reported dollar loss from fraud originating in Canada is also increasing. *Id.* Complaints come from all over the United States. Appendix, p. 14.

The Toronto (Ontario), Montreal (Quebec), and Vancouver (British Columbia) areas have generated the largest number of U.S. consumer complaints, and the three provinces of Ontario (42%), Quebec (33%), and British Columbia (17%) account together for 92% of *Consumer Sentinel*'s U.S. consumer complaints against Canadian companies during 2000. Appendix, p.7. These are the main Canadian population centers and appear to house a growing number of companies engaged in telemarketing fraud.

Of course, cross-border fraud is not a one-way problem. About 12% of the cross-border complaints in *Consumer Sentinel* for 2000 were by Canadian consumers against U.S. companies. Leading complaint categories here were travel, Internet auction, and sweepstakes, with the travel complaints mostly against businesses in Florida. Appendix, pp. 2, 11-13. In the past ten years, FTC legal actions have resulted in the return of more than $730,000 in redress to more than 2,700 Canadian consumers.

B. *Subject Matter of Complaints by U.S. Consumers Against Canadians*

The highest number of complaints from U.S. consumers against Canadian companies concern sweepstakes, advance-fee loans, lotteries, and Internet auctions. Appendix, p. 6. Sweepstakes and related prize promotion complaints accounted for 51% of these complaints. Advance-fee loan complaints accounted for about 24% of the complaints, and lotteries accounted

[29] Dollars paid are equated with dollar loss, given that consumers receive products or services of either no or minimal value from the types of schemes involved.

for about 6%. Appendix, p. 4. Moreover, 61% of the dollar loss U.S. consumers reported about sweepstakes, advance-fee loans, and lotteries overall involved Canadian companies. While Internet auctions also accounted for about 6% of these complaints, they accounted for only about 1% of the dollar loss. Appendix, p. 6.

1. Sweepstakes

Sweepstakes schemes and related prize promotion pitches can take several forms. Often telemarketers "guarantee" that consumers have won valuable prizes or gifts, such as vacations or automobiles, but require victims to submit payment for nonexistent shipping, taxes, customs, or bonding fees. Some schemes never provide consumers with any prize or gift, while others provide inexpensive items, often called "gimme gifts" or "cheap gifts."

According to *Consumer Sentinel* statistics for 2000, sweepstakes complaints against Canadian entities represented more than $15 million in losses to U.S. consumers. That represents 78% of reported economic injury to U.S. consumers due to Canadian-based fraud. Appendix, p. 5. Quebec, Ontario, and British Columbia were the top three company locations for sweepstakes complaints (followed by New York, Florida, and California).

2. Advance-Fee Loans

In advance-fee loan cases, telemarketers seek out people with bad credit and offer them loans or credit cards in exchange for fees paid upfront. Those who are offered loans typically never receive them; those who are offered credit cards usually get only a standard application form or generic information on how to apply. Most advance-fee loan telemarketers get consumers to pay the upfront fee by persuading them that they are certain or nearly certain to receive loans. Fees range from $25 to several hundred dollars. Telemarketers often assure

consumers that they will receive a refund in the unlikely event that a loan is not forthcoming. After paying the fee, however, consumers either never hear from the telemarketer again or they get a form letter from a "turndown room" that credit has been denied.[30]

The losses U.S. consumers reported from this type of scheme were almost $1.2 million for 2000. For this type of scheme, Ontario generated the highest number of complaints by company location during 2000, causing 35% of the economic injury (followed by Florida, California, and New York); Quebec ranked fifth.

3. Foreign Lottery Schemes

In lottery scheme cases, telemarketers offer consumers the opportunity to "invest" in tickets in well-known foreign lotteries, such as those in Canada and Australia. *Consumer Sentinel* statistics show that 62% of U.S. consumer complaints about lottery scams are against Canadian companies, which reportedly caused more than $1.2 million in losses. British Columbia, Quebec, and Ontario were the top complaint locations and were responsible for approximately 52% of the economic injury to consumers resulting from this scam.

4. Breakdown of Complaints by Canadian Province

The breakdown of consumer complaints varies by company location. Half of the *Consumer Sentinel* complaints filed by U.S. consumers against Ontario companies are for advance-fee loan scams, and a third of the complaints are for sweepstakes. Appendix, p. 9. By contrast, over half of the complaints lodged by U.S. consumers against companies in British Columbia are for sweepstakes, and 18% of the complaints are for lottery scams. Appendix, p.

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[30] The Telemarketing Sales Rule prohibits these practices. 16 C.F.R. § 310.4(a)(4).

10. In Quebec, the vast majority of complaints by U.S. consumers, 83%, are about sweepstakes fraud. Appendix, p. 8.

C. Obstacles to Cross-Border Enforcement

The main obstacles to cross-border law enforcement efforts against telemarketing fraud are the difficulties of obtaining information about foreign targets and enforcing domestic remedies in foreign jurisdictions. Canadian law enforcement agencies share with their U.S. counterparts a commitment to address fraud problems in which most of the victims are Americans. Nevertheless, cross-border telemarketing fraud continues to be a significant problem. Difficulties in investigating foreign targets and enforcing remedies against them are routine in any international law enforcement effort, and fraudulent Canadian telemarketers that target U.S. consumers take advantage of these difficulties to shield themselves from law enforcement.

1. Information Gathering Roadblocks

When the FTC pursues domestic targets, it has access to numerous sources of information about incriminating evidence and assets. Such sources include third party suppliers, former employees, public records, express package companies, telephone and Internet service providers, mail drops, and financial institutions. Moreover, the FTC has the authority to issue compulsory process to obtain evidence, both from third parties and directly from prospective defendants.[31] Our ability to obtain information about foreign targets is much more limited. In addition, as a practical matter, we generally lack the ability to compel foreign targets or third parties to respond to information requests.

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[31] 15 U.S.C. § 57b-1(c)(1).

The Commission's ability to obtain information through Canadian authorities is also restricted. In recent years, the United States and other nations, including Canada, have entered into bilateral mutual legal assistance treaties ("MLATs") for the cross-border exchange of information.[32] However, these treaties are limited to criminal matters. Because we lack criminal authority, the FTC cannot use the U.S.-Canada MLAT to obtain information from Canadian law enforcement agencies about fraud schemes operating in Canada.[33]

Further, both U.S. and Canadian law impose certain limits on information sharing. While there are substantive reasons why the law protects the confidentiality of certain information, these protections may in some cases hinder cross-border fraud prosecutions.

On the Canadian side, Section 29 of the Canadian Competition Act, for example, prohibits our most direct Canadian counterpart, the Competition Bureau of Industry Canada, from communicating to any person other than a "Canadian law enforcement agency or for the purposes of the administration or enforcement of th[e] Act:" (1) the identity of any person from whom information was obtained and (2) any information obtained through an order to produce a written return or a record or by a search warrant, unless that information has been made public.[34]

On the U.S. side, the nondisclosure provisions of the FTC Act also prevent us from sharing certain categories of investigative information with our foreign counterparts. Thus,

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[32] The United States has 19 MLATs in force with foreign governments. In addition to facilitating information sharing, the treaties include the power to summon witnesses, to compel the production of documents and other real evidence, to issue search warrants, and to serve process.

[33] Treaty on Mutual Legal Assistance In Criminal Matters, Mar. 18, 1985, U.S.-Can., 24 I.L.M. 1092.

[34] Competition Act, R.S.C., Part II, § 29 (1985) (Can.).

absent permission from the source of information, the FTC is not authorized to share with foreign law enforcers: (a) trade secrets or confidential commercial information; (b) information received by the Commission pursuant to compulsory process in a law enforcement investigation; and (c) information received by the Commission in a law enforcement investigation, which is marked confidential but is submitted voluntarily in lieu of compulsory process.[35]

The breadth of the FTC's information-sharing constraints hampers our ability to coordinate cross-border law enforcement. Although existing cross-border agreements allow for the sharing of some information–including in particular consumer complaints–there is other information the FTC is unable to share. The FTC must withhold the affected categories of information from Canadian law enforcement authorities even when the same information may be shared with domestic law enforcement agencies,[36] and even when sharing it would significantly advance the FTC's own investigation. While the FTC is unable to share significant information with our foreign counterparts, other U.S. agencies may be able to do so if they are covered by an MLAT similar to the U.S.-Canada MLAT.[37] Even in instances when Canadian law enforcement

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[35] 15 U.S.C. §§ 46(f) (trade secrets and confidential commercial information), 57b-2(b) (compulsory submissions). To avoid creating a disincentive to voluntary cooperation with Commission investigations, the Commission has extended comparable protection to materials submitted voluntarily, in lieu of compulsory process, in a law enforcement investigation and designated confidential. 16 C.F.R. § 4.10(d). *See also* 15 U.S.C. § 57b-2(f) (FOIA exemption for such materials).

[36] 15 U.S.C. §§ 46(f), 57b-2(b)(6).

[37] *See* U.S. - Canada Treaty on Mutual Assistance in Criminal Matters, signed 3/18/85; entered into force January 24, 1990, 100th Cong., 2d Sess, Treaty Doc. 100-14; Exec. Rpt. 100-28; Exec. Rpt. 101-10; 24 ILM 1092-1099, July 1985, No. 4.

agencies may have authority to obtain and share information in some of these categories with FTC staff, the FTC may not reciprocate.[38]

2. Inability to Enforce Injunctive and Equitable Relief

The FTC has significant powers and resources to stop fraudulent practices, such as the ability to obtain injunctions and asset freezes. These powers enable us to stop fraudulent conduct soon after we obtain evidence of it, to preserve wrongfully obtained assets, and to provide redress to as many aggrieved consumers as possible. However, while our authority exists before U.S. judges, it does not extend to foreign courts. Canadian telemarketers are aware of these jurisdictional limitations and take advantage of them.

The FTC has obtained personal jurisdiction over Canadian defendants in U.S. courts because of their transactions in the U.S. However, so long as defendants and their assets remain in Canada, preliminary and permanent injunctions issued by U.S. courts cannot reach them to halt their conduct.[39]

Moreover, if the FTC obtains a judgment for consumer redress, enforcement of that judgment across borders is difficult at best because asset freezes reach only property held in or controlled by someone in the United States. Accordingly, faced with a typical FTC action, Canadian defendants can often continue to operate their deceptive businesses in Canada, defrauding U.S. residents and dissipating assets.

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[38] For example, the British Columbia Attorney General is authorized to share investigational information obtained through compulsory process with the Commission staff working on Project Emptor investigations (discussed below), but FTC staff may not share similar investigational information obtained by the Commission with the British Columbia Attorney General staff assigned to Project Emptor.

[39] Contempt of court has not generally been treated as an offense subject to extradition.

IV. FTC Initiatives to Combat Cross-Border Telemarketing Fraud

Eight years ago, the FTC appeared before a Senate Subcommittee to address this issue and discussed some of the same obstacles we continue to face today.[40] The FTC has overcome at least some of the difficulties and limitations involved in the prosecution of cross-border telemarketing by building strong cooperative relationships with other domestic and foreign law enforcement agencies. Moreover, the FTC has undertaken several initiatives to fight these international scams: cases; conferences and workshops; regional partnerships; cooperation agreements; *Consumer Sentinel;* and consumer education.

A. Cross-Border Telemarketing Cases

As discussed above, the most common telemarketing scams emanating from Canada and targeting U.S. consumers are sweepstakes, advance-fee loans, and foreign lotteries. The FTC has filed law enforcement actions against Canadian enterprises operating each of these scams. Other cases, discussed in a separate section below, have been brought either as cooperative endeavors with Canadian officials or as proceedings in which the FTC has been involved in supporting legal action by another agency.

Prize Promotions: The FTC's first initiative against cross-border prize promotions was part of "Project Jackpot," a joint investigation that resulted in 56 enforcement actions against 79 defendants in 17 states in 1996. Included in Operation Jackpot was an FTC case against a company located in Montreal, Canada. An Ohio federal district court issued a temporary

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[40] *Hearing on International Telemarketing Fraud Before the Subcomm. on Regulation and Government Affairs of the Senate Comm. on Governmental Affairs,* 99th Cong. (1993) (Statement of the Federal Trade Commission presented by Christian S. White, Acting Director of the Bureau of Consumer Protection).

restraining order, including an asset freeze, and ultimately, a default judgment for $1 million (Canadian).[41]

Advance-Fee Loans: The FTC, in cooperation with the British Columbia Ministry of Attorney General, filed its first case against a Canadian advance-fee loan telemarketer in 1996. This case, which was part of Operation Loan Shark, a series of cases targeting advance-fee loan telemarketers, was the first to utilize the newly promulgated Telemarketing Sales Rule against a foreign boiler room.[42] In later advance-fee loan sweeps, additional Canadian telemarketers were targeted.[43]

Lotteries: In 1997, the FTC filed an action against a Las Vegas firm that allegedly provided credit card processing services for approximately 60 Canadian-based lottery telemarketers.[44] The FTC filed two cases against foreign lottery telemarketers in 1997[45] and in 1998[46] against Vancouver B.C. boiler rooms.

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[41] *FTC v. 9013-0980 Quebec Inc., ("Incentive International")*, CV-1567 (N.D. Oh. filed July 18, 1996). The FTC has been unable to collect on this judgment, illustrating the problems outlined above regarding foreign enforcement of judgments.

[42] *FTC v. Ideal Credit Referral Serv. Ltd.*, No. C96-0874R (W.D. Wash. filed June 5, 1996).

[43] *See e.g. FTC v. Walton,* No. CIV98-0018 PCT SMM (D. Ariz. filed Jan. 6, 1998). In the Commission's most recent advance-fee loan sweep, Operation Advance Fee Loan 2000, three criminal cases were filed against advance-fee loan boiler rooms by Canadian law enforcement authorities.

[44] *FTC v. Woofter Investments Corporation,* CV-S-97-00515-LDG (RLH) (D. Nev. April 28, 1997).

[45] *FTC v. Pacific Rim Pools International,* C97-1748 (W.D. Wash., Nov. 7, 1997).

[46] *FTC v. Win USA Service, Ltd.*, No. X99 0006 (W.D. Wash Nov. 3, 1998).

Two other FTC's cases filed in U.S. Courts have challenged Canadian-based telemarketing companies selling foreign lottery tickets to U.S. residents. In the largest of these, the FTC's case [47] was joined with a parallel case filed in Canadian courts by the Department of Justice's Office of Foreign Litigation, which sought and obtained a *Mareva* injunction[48] freezing the defendants' assets in Canada (which was entered by an Ontario Provincial Court in December 1998). In October 2000, the U.S. District Judge entered a redress judgment for $19.7 million. Canadian litigation is pending for recovery of any available redress funds. The FTC filed a second action in U.S. District Court against another Toronto-based lottery scam.[49] Litigation in that case is ongoing.

The FTC has also filed several cases against fraudulent enterprises operating in Canada, each involving credit card loss protection scams. These matters are also ongoing.[50]

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[47] *FTC v. Windermere Big Win Int'l Inc.*, No. 98C 8066 (N.D. Ill. Sep. 7, 1999).

[48] A *Mareva* injunction is a creature of British common law, and such actions are available in British Commonwealth countries. Although each country has developed different laws concerning the application and scope of the action, they are all referred to generically as "*Mareva* injunctions." The name derives from the landmark 1975 case of *Mareva Compania Naviera S.A. v. International Bulkcarriers S.A.*, 1 All E.R. 213 (1975) (C.A.) in which the English Court of Appeal granted an injunction to freeze the assets of a defendant prior to judgment because there was a danger of asset dissipation. A 1987 survey showed that *Mareva* injunctions have been granted in Australia, New Zealand, Canada, Malaysia, Hong Kong and Singapore. *See* R. OUGH, THE MAREVA INJUNCTION AND ANTON PILLER ORDER: PRACTICE AND PRECEDENTS (1987).

[49] *FTC v. Growth Plus Int'l Marketing, Inc.*, No. 00C-7886 (N.D. Ill. filed December 18, 2000).

[50] *FTC v. 1306506 Ontario Ltd.*, No. 00-CV-0906A(SR) (W.D.N.Y. filed Oct. 23, 2000).

B. Conferences and Workshops

The FTC has focused law enforcement attention on the cross-border fraud problem by working with other partners to hold various cross-border workshops on telemarketing fraud. The FTC and the Vermont Attorney General's Office held the first one in 1996, in Burlington, Vermont, with workshops after that in Vancouver and Toronto. Other U.S. participants at these workshops included various state Attorneys General, U.S. Attorney's Offices, the FBI, the U.S. Postal Inspection Service, the Customs Service, the Secret Service, and several private sector organizations. Canadian attendees included Industry Canada, the RCMP, provincial law enforcement agencies, and metropolitan police departments.

The FTC also participated in the joint U.S.-Canada working group that prepared a 1997 report entitled "United States - Canada Cooperation Against Cross-Border Telemarketing Fraud." The report, requested by President Clinton and Prime Minister Chrétien, contained key joint recommendations about battling cross-border telemarketing fraud, which we continue to implement today.[51] The report included recommendations that regional task forces be encouraged to cooperate across the international border to the maximum extent possible; that governments and agencies examine privacy and other laws relevant to cross-border shared access information systems with a view to expanding access; and that the scope of the existing mutual legal assistance arrangements be considered to determine whether they might be expanded to deal more effectively with telemarketing fraud cases.

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[51] REPORT OF THE UNITED STATES-CANADA WORKING GROUP ON TELEMARKETING FRAUD (1997), *available at* http://www.usdoj.gov/criminal/uscwgrtf/index.html.

C. Regional Partnerships

Consistent with the 1997 report, a central part of the FTC's approach to fighting cross-border telemarketing fraud has been the Ontario and British Columbia regional partnerships. These partnerships allow us to battle more efficiently different scams on different fronts by forging relationships with the respective Canadian provincial authorities. Through the ***Ontario Strategic Partnership,*** the FTC's Midwest Regional office has worked closely with Ontario authorities on Toronto-based telemarketing. Through ***Project Emptor,*** our Northwest Region office has coordinated actions with the authorities from British Columbia on the scams that emerge from Vancouver boiler rooms.

1. The Ontario Strategic Partnership

One of the cross-border fraud conferences mentioned above took place in Toronto in February of 2000. At this conference, participants discussed the fact that Toronto boiler rooms had begun avoiding sales to Canadians and were instead targeting Americans. The conference also made it clear that there would be a real benefit in a more active partnership targeting resources against such scams. As a result of this conference, the FTC, the Toronto Police Service, the Ontario Ministry of Consumer and Business Services, and the Competition Bureau of Industry Canada formed the Ontario Strategic Partnership to work together and combat cross-border fraud. Each agency pledged to provide resources to this common enterprise and to work together supporting each other's cases. Since that time, the partnership has added several new partners, including the U.S. Postal Inspection Service and the Ontario Provincial Police.

Since the Partnership began, Ontario criminal officials have closed down 62 companies. At least 84 people have been arrested. These Canadian actions have resulted in the return of

roughly $660,000 (Canadian), a majority of it to U.S. consumers. On our side of the border, the U.S. Postal Inspection Service obtained indictments in federal court in Harrisburg, Pennsylvania, and the defendants will be extradited to the U.S. for trial.

These legal actions resulted from agencies working together, contributing personnel, information, and necessary equipment. These measures combined to support the overall effort. For example, one of the FTC's major roles in the Partnership is to provide information from *Consumer Sentinel* to the Partnership members to identify and locate existing frauds, as well as victims and witnesses. FTC investigators help locate and interview victims and obtain their statements. If needed, the FTC pays costs in appropriate cases for witnesses to travel to Toronto to testify in Canadian criminal proceedings. Moreover, the FTC is handling refunds to American victims that are ordered by Canadian criminal courts.

In addition, the members of the partnership have shared investigative information, where legally possible. The FTC has assisted Canadian law enforcers through our investigatory tools and contacts. At the same time, our Canadian partners have been instrumental in helping us develop our investigations. The partnership members work together on a daily basis, and the success of this effort has brought additional partners to the effort. In recognition of these results, the Strategic Partnership won the 2001 Consumer Agency Achievement Award by the National Association of Consumer Agency Administrators.

2. British Columbia – Project Emptor

The FTC and the British Columbia Ministry of Attorney General have conducted joint investigations against cross-border telemarketing scams since 1996. The initial focus of these combined efforts was advance-fee loan telemarketers operating from Vancouver, with the FTC

and British Columbia Attorney General bringing parallel civil actions in their respective countries. The result was injunctive relief effectively putting the targets out of business and the return of about $50,000 in uncashed checks and money orders to U.S. consumers.[52]

In 1997, these coordinated law enforcement efforts turned to the growing number of Vancouver lottery scams targeting U.S. consumers. The FTC sued a Nevada corporation[53] that allegedly was providing credit card processing and foreign lottery ticket purchase services for at least 60 Canadian-based lottery telemarketers. The FTC, British Columbia Attorney General, and the Attorney General of Washington then brought civil actions against two lottery telemarketing operations.[54] These actions yielded about $2 million in redress for U.S. consumers.

In 1998, the RCMP's Vancouver Commercial Crime Section, with support from the British Columbia Attorney General, formed the Project Emptor Task Force.[55] At that time, RCMP information suggested the existence of more than 150 separate lottery telemarketing rooms in the Vancouver area. The FTC supported formation of Project Emptor and continues to conduct cross-border investigations as part of the task force. Project Emptor has allowed U.S. and Canadian authorities to engage in joint target identification; joint investigations; coordinated

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[52] *FTC v. Ideal Credit Referral Serv. Ltd.,* No. C96-0874R (W.D. Wash. filed June 10, 1996); *FTC v. Gary Walton,* No. CIV98-0018 PCT SMM (D. Ariz. filed Jan. 6, 1998).

[53] *FTC v. Woofter Investment Corporation,* CV-S-97-00515-LDG (RLH) (D. Nev. April 28, 1997).

[54] *FTC v. Pacific Rim Pools International,* C97-1748R (W.D. Wash., Nov. 7, 1997).

[55] An analogous task force, Project Colt, was organized in Montreal by the RCMP and various U.S. and Canadian agencies.

case filings and asset recovery efforts in the U.S. and Canada; sharing of post-filing discovery; and coordinated preliminary and permanent relief.[56] FTC investigators obtain statements from U.S. victims, while RCMP and British Columbia Attorney General investigators develop evidence about the schemes' operators.[57]

In 1999, Project Emptor investigators learned of a new lottery scheme, in which consumers are purportedly sold government savings bonds issued by the National Savings Bank of England. Bond holders are supposedly entered in a monthly lottery in which all of the bond interest is awarded to a few bond holders. While such bonds do exist, telemarketers in Canada are not authorized to sell them and, because the bonds have a lottery feature, it is illegal to sell them in the United States. Project Emptor participants have taken action against this new scheme.[58] Finally, addressing yet another emerging fraud scheme, the FTC and the British

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[56] Thus, in 1998 the FTC, the states of Washington, Arizona, and Pennsylvania, and the British Columbia Ministry of Attorney General took action against two Vancouver lottery schemes, obtaining injunctions, and in one case getting about $325,000 in consumer redress. *FTC v. Win USA Service, Ltd.*, Civil Action No. C98-1614Z (W.D. Wash, filed Nov. 13, 1998, final order issued Feb. 5, 2001); *Commonwealth of Pennsylvania v. Systems 3 Marketing* (M.D. Penn., filed Dec. 14, 1998).

[57] Starting last year, the Los Angeles FBI Office and the U.S. Attorney's Office in Los Angeles added an important new component to Project Emptor. FBI agents stationed in Vancouver assist in conducting civil and criminal investigations, while the U.S. Attorney's Office in Los Angeles has successfully prosecuted and incarcerated a number of Canadian telemarketers.

[58] *FTC v. B.B.M. Inv., Inc.*, No. C00-0062 (W.D. Wash. filed on Jan. 13, 2000); *FTC v. Canada Prepaid Legal Serv., Inc.*, No. 00-CV-02080 (W.D. Wash. filed Dec. 11, 2000). The British Columbia Attorney General has filed a parallel action in the second matter. The FTC, the Department of Justice's Office of Foreign Litigation, and the receiver in the FTC's case have jointly filed a civil common law fraud action in British Columbia against the defendants seeking the return of assets to the U.S. on behalf of defrauded U.S. consumers. At about the same time, the U.S. Attorney's Office in Los Angeles obtained an indictment against the central figure

(continued...)

Columbia Attorney General, again acting through Project Emptor, recently filed parallel civil actions against a British Columbia company telemarketing credit card loss protection and debt consolidation packages to U.S. consumers.[59]

D. Cooperation Agreements

Since the early 1990s, we have been building a cooperative relationship with our Canadian counterparts. In 1995, the FTC and Department of Justice signed an agreement with the Canadian Director of Investigation and Research (the predecessor to the Deputy Commissioner for the Fair Business Practices Branch at Industry Canada's Competition Bureau). Addressing deceptive marketing practices, the FTC and Canada's Director of Investigation and Research agreed (a) to cooperate in the detection of cross-border deceptive marketing practices; (b) to inform each other as soon as practicable of investigations and proceedings involving such practices; (c) to share information relating to the enforcement of deceptive marketing practice laws (subject to confidentiality laws); and (d) to coordinate, in appropriate cases, enforcement against deceptive marketing practices with a trans-border dimension.[60]

E. Consumer Sentinel

The FTC developed the *Consumer Sentinel* system described above to respond to the types of information-sharing challenges articulated by the 1997 joint working group on U.S.-

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[58] (...continued)
behind the telemarketing network. That person was arrested in Vancouver and now faces extradition to the United States.

[59] *FTC v. OPCO Int'l Agencies, Inc.*, No. CO1-2053R (W.D. Wash. filed Feb. 21, 2001).

[60] Agreement Between The Government of The United States of America and The Government of Canada Regarding the Application of Their Competition and Deceptive Marketing Practices Laws (Aug. 3, 1995), *reprinted at* 4 Trade Reg. Rep. (CCH) ¶ 13,503.

Canada cross-border fraud. Using this central repository of complaints and its other intelligence tools, the FTC and its many partners have developed evidence and coordinated law enforcement actions. This tool has permitted law enforcers to better spot trends, and pursue the con artists more quickly and more efficiently.

F. *Consumer Education*

As a complement to its law enforcement efforts, the FTC's consumer education initiatives warn consumers about the perils of telemarketing fraud. The FTC has developed the Partnership for Consumer Education, a cooperative umbrella effort among corporations, trade groups, consumer organizations, and federal agencies that have joined with us to help provide effective consumer education materials against fraud. With the assistance of our partners, the Commission has arranged for messages about fraud to appear in such diverse locations as websites, sales catalogs, billing statements, classified advertising, and even on public transit buses. Our consumer education materials, which are available online,[61] advise consumers to hang up on any telemarketer who tells them that they need to send in payment to receive an award or to participate in a prize promotion. We also warn consumers to never divulge their credit card numbers or checking account numbers over the phone unless they have agreed to make a purchase and they understand the terms of the purchase. Our materials also stress that consumers should be on the alert for high-pressure tactics or demands from a telemarketer for an immediate purchasing decision.

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[61] *See* http://www.ftc.gov/ftc/consumer.htm.

V. Moving Ahead to Improve Law Enforcement Against Cross-Border Fraud

The FTC has made significant strides in developing ways to combat cross-border telemarketing fraud over the past few years. To keep pace with this emerging problem, however, we need to address the main challenges described above: improving information sharing and working for more effective cross-border legal remedies. We also need to increase our cooperative efforts with our Canadian counterparts.[62] Improvement in these areas will help us more quickly halt ongoing frauds and recover money for consumers, important complements to the deterrent effect of criminal prosecutions.

Further development of *Consumer Sentinel* is key to improving information sharing and cooperation efforts. The Subcommittee, in requesting testimony, indicated it is "particularly interested in the current status, impact, and prospects of programs such as the FTC's *Consumer Sentinel* system." We have described the project's current status and impact above. As to its prospects, we are working towards the following goals:

1. Encourage greater use of *Consumer Sentinel*. Having signed up more than 320 U.S. and Canadian law enforcement agencies, we are now working to increase the number of individual law enforcement users. We are also encouraging users to participate more fully. For example, we recently established a toll-free line to improve customer service and make *Consumer Sentinel* more accessible to users.

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[62] As we have said in the analogous context of cross-border Internet fraud, "U.S. law enforcement must look for more effective cross-border legal remedies, and must work more cooperatively with law enforcement and consumer protection officials in other countries." *See* fn.2 *supra*.

2. Increase the number of law enforcement agencies contributing complaints to *Consumer Sentinel*'s in order to strengthen its role as the central repository of consumer fraud complaints. In this regard we are very pleased to note that a major partner, the U.S. Postal Inspection Service, recently signed an agreement to transfer its consumer fraud complaints into *Consumer Sentinel*, and has started doing so.
3. Use *Consumer Sentinel* to improve communication in order to better identify enforcers and targets. We have developed and implemented "alert" technology so that law enforcers can notify each other about investigations. The more that law enforcers use this technology, the more useful it is.
4. Encourage other law enforcers to seek additional ways to become active partners in *Consumer Sentinel.* For example, we note that the U.S. Postal Inspection Service has detailed an Inspector to be the program's manager for a year, and the U.S. Secret Service has recently detailed an agent to work on the identity theft component of the *Consumer Sentinel* system. We believe that all agencies involved benefit from these kinds of close working relationships.

We also suggest exploring how the existing legal framework for sharing information might be modified to facilitate cooperation in cross-border cases. We make no specific legislative recommendations on this subject here; but we note that there are several issues worth considering carefully, including what additional kinds of information might be shared and under what circumstances. It is also important to consider the implications of various possible vehicles that might be used to accomplish such information sharing. Mutual legal assistance legislation,

for example, might allow the FTC and Canadian law enforcers to enter into agreements to share a broader range of investigatory information.[63] Such information could include data about fraud artists and victims, but could also be broad enough to permit U.S. and Canadian agencies to assist in each others' investigations through the use or enforcement of compulsory process. Another possibility to consider is whether new or existing treaties might provide a vehicle for information sharing.[64] We would be glad to work with the Subcommittee, and with other members of the U.S-Canada cross-border fraud working group, to explore these issues further.

We also need to explore how to make our civil remedies more effective across borders. For example, to prevent fraud from being profitable, we need better tools to be able to pursue ill-gotten gains. Thus, we should consider how U.S. and foreign courts, subject to appropriate

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[63] *See, e.g.,* the International Antitrust Enforcement Assistance Act ("IAEAA"), which enables the FTC and Department of Justice to negotiate assistance agreements on behalf of the United States with foreign counterparts in the antitrust area. 15 U.S.C. §§ 6201 *et seq.* Under the IAEAA, antitrust agencies can agree to share confidential information and to use compulsory process to obtain information for each other. Another example is the provision enabling the Securities and Exchange Commission to share with foreign agencies information about its investigations involving securities fraud. 15 U.S.C. § 78x(c). Congress passed this statute in response to concerns about international securities fraud. H.R. Rep. No. 101-240 (1989). An example of an analogous foreign statute is the Australian Mutual Assistance in Business Regulation Act ("MABRA"), which in certain circumstances allows a Commonwealth regulator to use compulsory process on behalf of a foreign government or agency. Mutual Assistance in Business Regulation Act, 1992, Part 1, Section 5 (Austl.), *available at* http://scaletext.law.gov.au/html/comact/7/3928/top.htm.

Canadian authorities are currently considering legislative authority to enter into similar agreements. *See* Bill C-23 (An Act to Amend the Competition Act and the Competition Tribunal Act), 1st Session, 37th Parliament, 49-50 Elizabeth II (2001).

[64] *Cf.* U.S.-Canada working group report, at 20, discussing mutual legal assistance treaties ("MLATs"), recommending "that the scope of the existing Canada-U.S. mutual legal assistance arrangements be considered to determine whether these might be expanded to deal more effectively with telemarketing-fraud cases." REPORT OF THE UNITED STATES-CANADA WORKING GROUP ON TELEMARKETING FRAUD, P. 20 (1997), *available at* http://www.usdoj.gov/criminal/uscwgrtf/index.html.

procedural safeguards, might better enforce preliminary and permanent monetary relief issued by courts of another nation against cross-border consumer scams.[65] Such mutual judgment recognition is another area where we would be glad to work with the Subcommittee, and with other members of the U.S-Canada cross-border fraud working group, to seek effective solutions.

The Commission appreciates the opportunity to provide its views on cross-border fraud. I would be happy to answer any questions.

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[65] The goal of mutual recognition of such judgments was recognized by an intergovernmental forum of twenty-nine countries in the 1999 Guidelines for Consumer Protection in the Context of Electronic Commerce issued by the Organisation for Economic Cooperation and Development. *See* http://www.ftc.gov/opa/1999/9912/oecd2.htm. Part Four recommends that "Member countries should . . . Co-operate and work toward developing agreements or other arrangements for the mutual recognition and enforcement of . . . judgments resulting from law enforcement actions taken to combat fraudulent, misleading or unfair commercial conduct."

Note that the October 1999 Preliminary Draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters, being negotiated by the Hague Conference on Private International Law, contains provisions that would arguably provide for some degree of cross-border enforcement of our asset freezes and monetary redress judgments. It does not provide for cross-border enforcement of our injunctive orders. A copy of the Preliminary Draft Convention can be obtained from the Hague Conference website at http://www.hcch.net.

Appendix to June 15, 2001 FTC Testimony on Cross-Border Fraud

Cross-Border Fraud Statistical Report

Federal Trade Commission
June 2001

ConsumerSentinel

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INTRODUCTION

Consumer Sentinel is a secure automated consumer complaint database developed by the Federal Trade Commission (FTC), in cooperation with its law enforcement partners, to collect and make available investigative information about consumer fraud and deception. Currently, the Consumer Sentinel database has over **350,000** complaints received by the FTC and other data contributors. The collected investigative information is accessible to federal, state, and local law enforcement agencies in the United States, Canada, and Australia through a secure, password-protected web site. Between January 1999 and March 2001, more than 70 organizations contributed data to Consumer Sentinel. More information on this joint project is available at www.consumer.gov/sentinel.

During calendar year 2000 Consumer Sentinel received over **97,000** fraud-related complaints about transactions involving more than **$138** million. The following are a series of statistical reports from the Consumer Sentinel database presenting information about U.S. and Canadian consumer complaints. Company location is based on addresses reported by the complaining consumers. Please note that in some instances companies report an address, often a maildrop, in one place, but are in fact located in another. Please note also that we are constantly adding data, and that this data is tracked using its original entry date into the data contributors' systems. Accordingly, transfers of data from other organizations may contain complaints from previous months. This may retroactively change some totals and percentages on our graphs and charts.

Leading Partners

Federal Trade Commission

National Association of Attorneys General

National Consumers League

Better Business Bureaus

US Postal Inspection Service

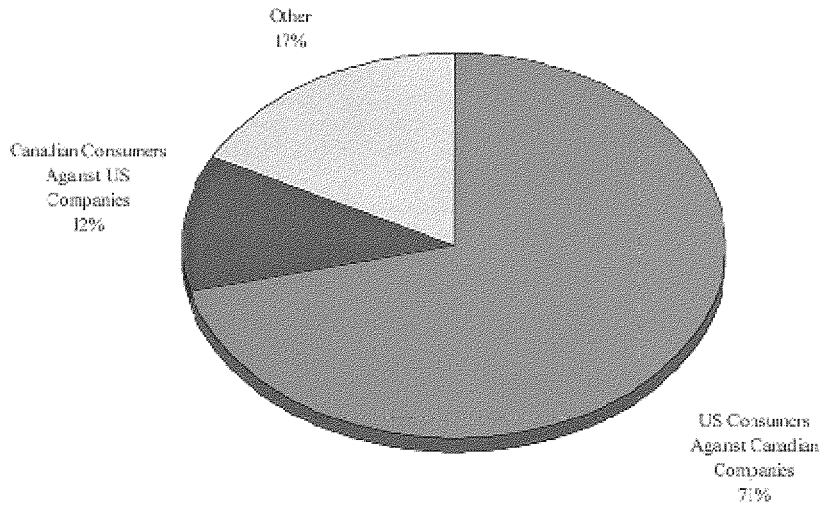
Canada's PhoneBusters

San Diego SoilerRoom Task Force

Australian Competition and Consumer Commission

KNOW FRAUD

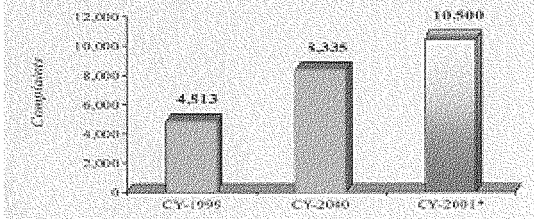
Percentage of Cross-Border Complaints
Calendar Year 2000*



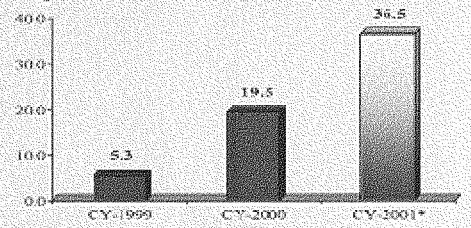
**Percentage is based upon the total number of complaints from United States and Canadian Consumers (11,735) where company location was reported.*

ConsumerSentinel

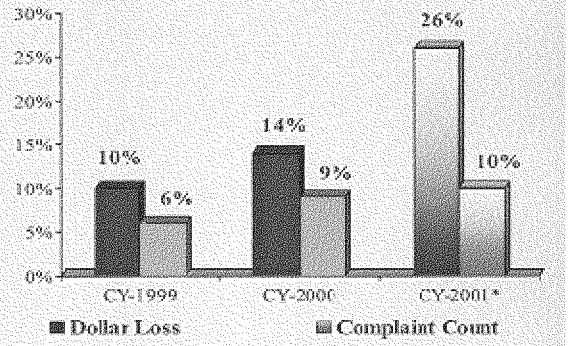
US Consumers Complaint Count Against Canadian Companies



Dollar Loss Reported by US Consumer Complaints Against Canadian Companies (In Millions)

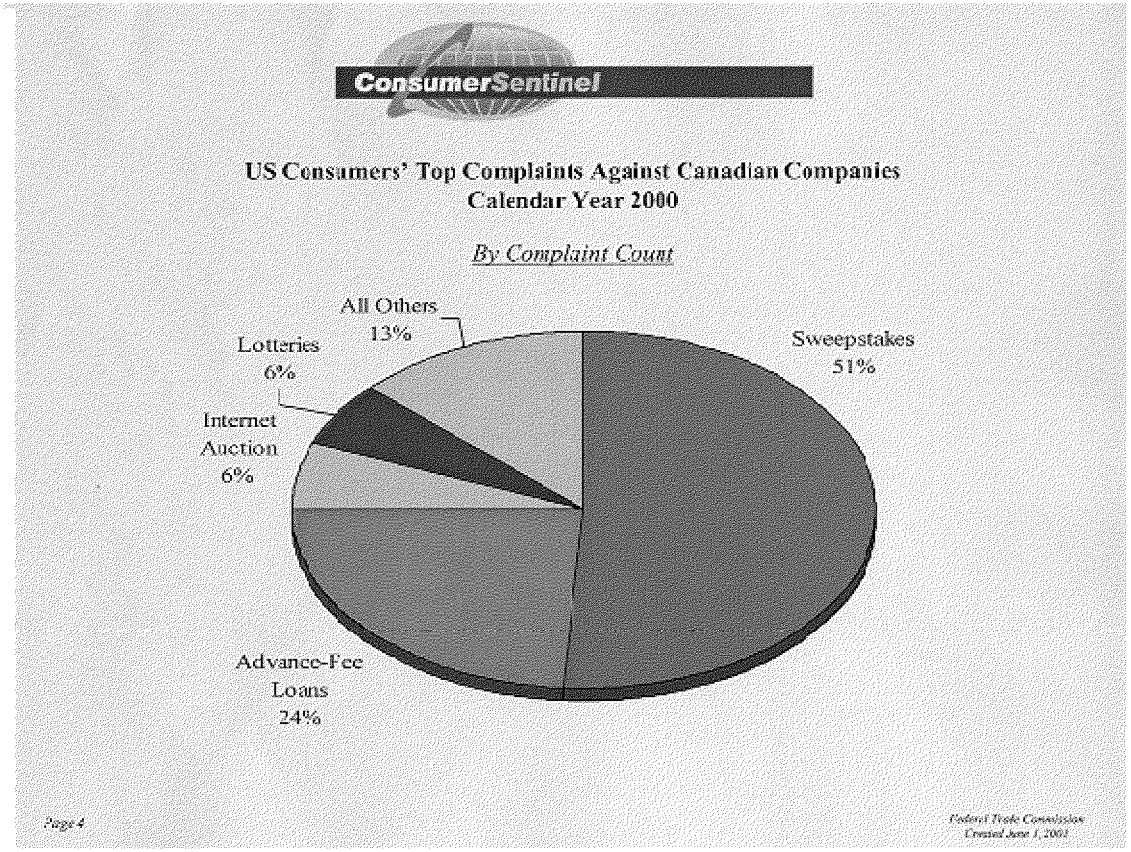


Percentage of Complaints and Dollar Loss From US Consumers Against Canadian Companies**



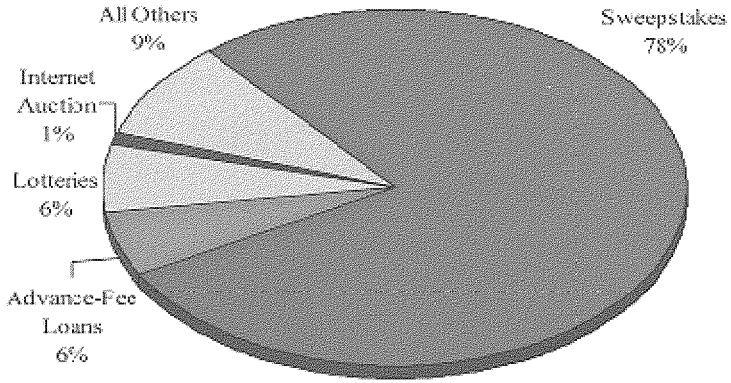
***Percentage is based upon the total number of complaints and total dollar loss reported by calendar year.*

**Projected Figures*


ConsumerSentinel
US Consumers' Top Complaints Against Canadian Companies
Calendar Year 2000
By Complaint Count
All Others
13%
Lotteries
6%
Internet
Auction
6%
Sweepstakes
51%
Advance-Fee
Loans
24%
Page 4
Federal Trade Commission
Created June 1, 2001

US Consumers' Top Complaints Against Canadian Companies
Calendar Year 2000

By Dollar Loss



US Consumer Complaints Against Canadian Companies
Calendar Year 2000

Complaint Count	Complaints Reporting Dollar Loss	Percentage of Complaints Reporting Dollar Loss	Total Dollar Loss Reported	Average Dollar Loss*	Mode**
8,317	7,238	87%	$19,504,801	$2,694	$26

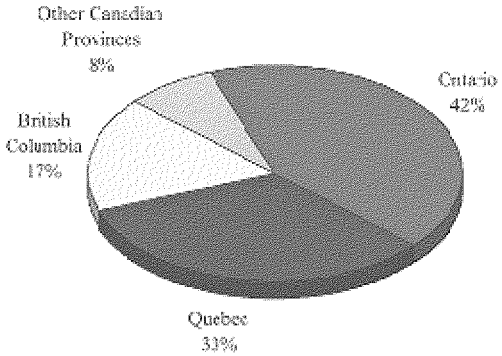
* Average dollar loss is based upon the total number of complaints where dollar loss was reported.

** Mode is the most frequently occurring dollar loss reported. Calculation of the mode excludes complaints with dollar loss reported as $0.

Top Product or Service

Rank	*Product or Service*	*No. of Complaints*	*Percentage of Complaints*	*Dollar Loss*	*Percentage of Dollar Loss*
1	Prizes\Sweepstakes\Gifts	4,253	51%	$15,192,367	78%
2	Advance-Fee Loans, Credit Arrangers	2,017	24%	$1,181,436	6%
3	Internet Auction	536	6%	$205,986	1%
4	Lotteries\Lottery Ticket Buying Clubs	479	6%	$1,220,588	6%
5	Shop-at-Home\Catalog Sales	181	2%	$107,422	1%
6	Investments: Other (note in comments)	109	1%	$652,365	3%
7	Employ Agencies\Job Counsel\Overseas Work	78	1%	$149,428	1%
8	Travel\Vacations	70	1%	$65,119	0%
9	Credit Card Loss Protection	65	1%	$3,541	0%
10	Computers: Equipment\Software	54	1%	$29,649	0%

US Consumers Complaints Against Canadian Companies by Canadian Province

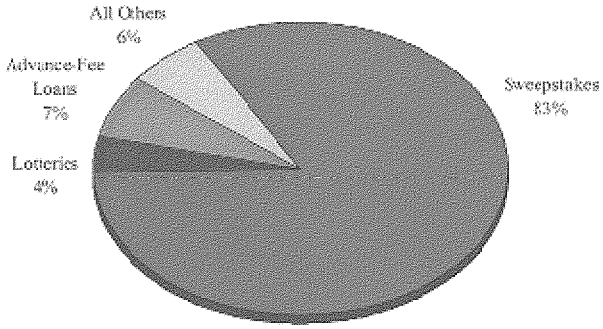


Detailed Complaint Count

Rank	*Company State Name*	*No. of Complaints*	*Percentage*
1	Ontario, Canada	3,513	42%
2	Quebec, Canada	2,712	33%
3	British Columbia, Canada	1,431	17%
4	Alberta, Canada	358	4%
5	Manitoba, Canada	102	1%
	Other Provinces	*199*	*2%*

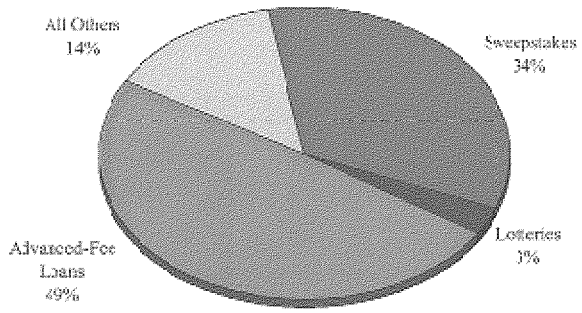
Top Subjects From US Consumers Complaints Against Companies Located in Quebec Canada
Calendar Year 2000

Rank	*Product or Service*	*No. of Complaints*	*Percentage*
1	Prizes\Sweepstakes\Gifts	2,209	83%
2	Advance-Fee Loans, Credit Arrangers	191	7%
3	Lotteries\Lottery Ticket Buying Clubs	96	4%
4	Internet Auction	57	2%
	Sum.	*2,553*	*96%*
	Sum Other:	*159*	*4%*



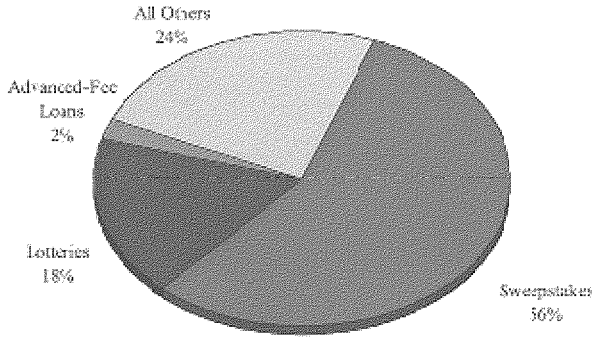
Top Subjects From US Consumers Complaints Against Companies Located in Ontario Canada
Calendar Year 2000

Rank	*Product or Service*	*No. of Complaints*	*Percentage*
1	Advance-Fee Loans, Credit Arrangers	1,663	49%
2	Prizes/Sweepstakes/Gifts	1,157	34%
3	Internet Auction	232	7%
4	Lotteries/Lottery Ticket Buying Clubs	92	3%
5	Shop-at-Home/Catalog Sales	87	3%
6	Travel/Vacations	53	2%
	Sum:	3,285	98%
	Sum Other:	228	2%



Top Subjects From US Consumers Complaints Against Companies Located in British Columbia Canada
Calendar Year 2000

Rank	*Product or Service*	*No. of Complaints*	*Percentage*
1	Prizes\Sweepstakes\Gifts	783	56%
2	Lotteries\Lottery Ticket Buying Clubs	254	18%
3	Internet Auction	151	11%
4	Investments: Other (note in comments)	79	6%
5	Shop-at-Home\Catalog Sales	31	2%
6	Advance-Fee Loans, Credit Arrangers	21	2%
	Sum:	1,319	95%
	Sum Other:	112	5%

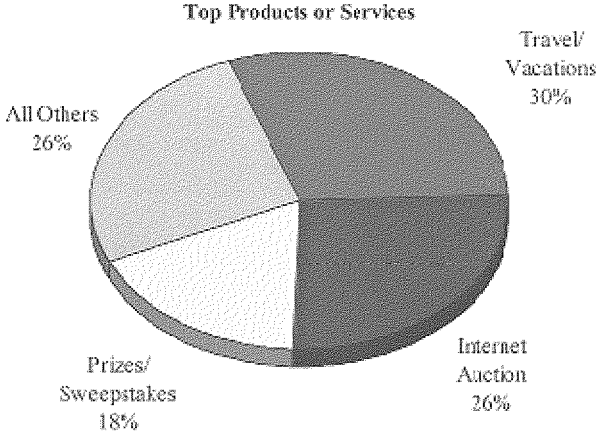


Canadian Consumer Complaints Against Companies Located in the United States
Calendar Year 2000

Totals

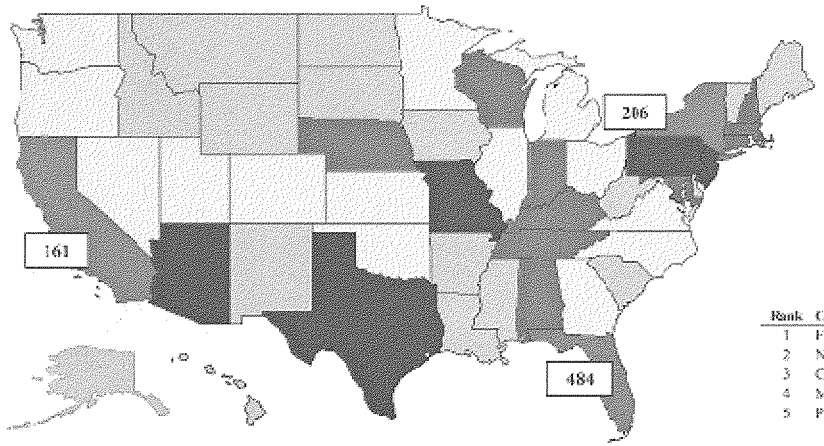
Complaint Count	Dollar Loss
1,366	$1,556,476

Top Products or Services



Canadian Consumer Complaints Against Companies Located in the United States
Calendar Year 2000

Top Company Locations in the United States



U.S. Company Locations

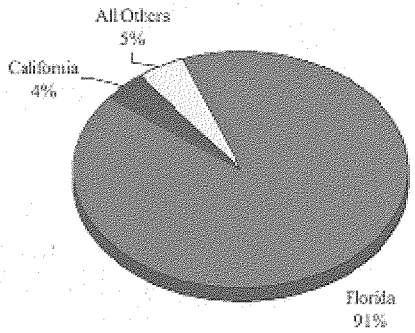
- Greater than 100 (3)
- 25 to 100 (5)
- 10 to 24 (14)
- 5 to 9 (10)
- Less than 5 (19)

Rank	Company State	No. of Complaints	Percentage*
1	Florida	484	35%
2	New York	206	15%
3	California	161	12%
4	Missouri	56	4%
5	Pennsylvania	44	3%

*Percentage is based upon the total number of Consumer Sentinel complaints (1,358) by Canadian consumers complaining about companies in the United States for calendar year 2000

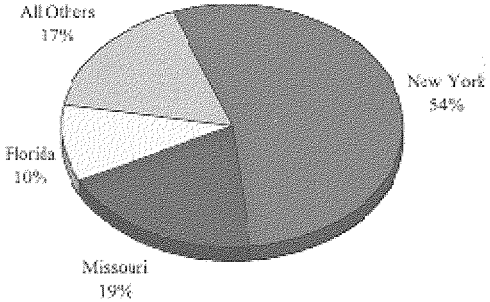
Canadian Consumer Complaints Against Companies Located in the United States
Calendar Year 2000

Travel/Vacation Complaints



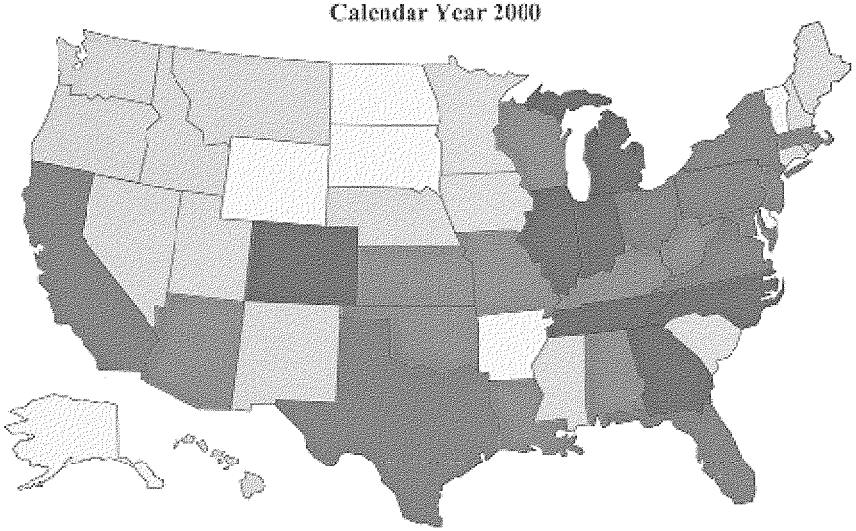
Company State	No. of Complaints
Florida	373
California	17
Virginia	6
Arizona	2
New York	2
All Others	*9*

Prizes/Sweepstakes Complaints



Company State	No. of Complaints
New York	132
Missouri	47
Florida	25
All Others	*41*

US Consumer Complaints Against Canadian Companies by Consumer State
Calendar Year 2000



No. of Complaints	No. of States
Greater than 301	7
201 - 300	7
101-200	12
51-100	16
25-50	8
Fewer than 25	1

Locations of Telemarketing Fraud Victims for Just One Scam
Senate Permanent Subcommittee On Investigations
EXHIBIT # 1
CA
ND
TX
LA
MS
AL
GA
SC
NC
VA
TN
IN
IL
MI
PA
NJ
NY
MA

Senate Permanent Subcommittee
On Investigations
EXHIBIT # 2

PLATINUM INDUSTRIES

3850 Jean Talon West, Suite 146, Montreal, Quebec H3R 2G8 Tel:(514)733-4632

May 3, 1995

Dear Mr.

This shall confirm, as per our telephone conversation, that along with $3600.00 in grocery coupons for the amount of $2000.00 we guarantee that you will receive two the following premiums:

1) 1995 Ford Mustang ✓

2) 1995 Electra Sport Boat

3) $10,000 Bond ✓

4) Home Entertainment Centre

Thank you in advance for your patronage, and we look forward to a long lasting business relationship. Should you have any further questions, feel free to contact me at your convenience.

I remain,

PLATINUM INDUSTRIES

A. Patterson
Director of Promotions

Secure Funds Transfer Notice
Delivery and Cash Payout Dept.

Cash Disbursement Division

DETERMINATION #: [illegible]

Re Undelivered Cashiers Check for:

[illegible]

Case File No: A17-577
Verified Cash Amount:
$10,000.00

[illegible]

Dear

This letter is for your eyes only. Please try to read it in a private place. It's in reference to the money that I'd like to see on it's way to you. Immediately, if possible. This time, your perserverance really paid off.

Please excuse the form letter attached below, but I wanted you to receive this letter as soon as possible. I have in my hand, right now, a fully endorsed and valid check for $10,000.00. It's part of my job duties to make sure that this check is delivered before the deadline, and time is getting shorter!

I have written your DETERMINATION NUMBER above (in the red box, so you cannot miss it). Check this number against the one printed below. If they match, then you are 100% guaranteed that it is the ONLY NUMBER that you can use to lay claim to the $10,000.00 prize.

When you do return the matching pre-selected winning claim number prior to the deadline date (10 days or earlier after you have received this letter), I'll get your check off to you by Uniformed Courier. I know you don't want any delay in getting your winnings into your bank. You can cash your check the day you receive it. I can even phone your bank to verify it for you. No purchase required.

Thank you, I sincerely want you to have this money. Complete sweeps rules appear on reverse. There are no tricks, no gimmicks. Just get in your winning matching claim number in the allotted time period, and the check is yours. I really would like this check off my hands as soon as possible. In addition to the ten thousand grand prize, other awards are one thousand, five hundred, one, one hundred, and fifty dollars.

Please complete the enclosed claim form, and then start looking in your mail for your check!

Sincerely,

Cash Disbursement Division

This letter is for your eyes only. Please try to read it in a private place. It's in reference to the money that I'd like to see on it's way to you. Immediately, if possible. This time, your preserverance really paid off.

I have in my hand, right now, a fully endorsed and valid check for $10,000.00.

Senate Permanent Subcommittee
On Investigations
EXHIBIT # 3

Senate Permanent Subcommittee
On Investigations
EXHIBIT # 4

TAE Trans-American Equities
CURRENCY EXCHANGE OFFICE

PAYMENT AUTHORIZATION NOTICE FORM 95587
[redacted]

PAYMENT AUTHORIZATION
* * * * * * * * * * *
MAX PAYMENT AMOUNT
* * * 2,000.00 * * *
PER VOUCHER NO.
3614336695

September 1, 2000

Dear '

A cash prize payable to you is being held by this office. You have been awarded this payment in a sweepstakes by a multi-national concern to promote international trade in the new millennium, no purchase required. This money can be yours, free and clear, without cost of any kind. Read this letter carefully for important information on how to claim these funds.

Please refer to the enclosed payment voucher. To the right of your name and address, you will see the exact amount of your prize. This amount (2,000) has been confirmed and payment has officially been authorized from among multiple currencies issued by the Currency Exchange Office, see terms and conditions for currency listing. Regardless of the currency of your prize, as a resident of the United States, you will be paid in U.S. dollars.

More importantly, you have been cleared for admittance as a guaranteed winner in the $54,000,000.00 Canadian Super 7 National Lottery prize pool. Fewer than 5% of U.S. residents are admitted into this program.

What this means is that you are absolutely guaranteed to win a cash prize in this lottery. The sponsor of this campaign has agreed to assume all the risk in making this guarantee. Trans-American Equities (TAE) will oversee the implementation of this program and disburse your prize money to you according to your personal instructions.

TAE is independent of any government department or bureau and secures all client winnings in a federally charted national bank for safekeeping. All drawings are administered and all prize money is guaranteed by the full faith and credit of the national government of Canada. See the enclosed brochure for a complete description of this phenomenal program and how it can make you a big cash winner.

BE ADVISED: Your winnings will be paid in one lump sum, not spread over 20 or more years as in most lotteries. Furthermore, no taxes will be withheld from your prize money and no reports will be filed with any government agency or tax office.

After we have processed your registration, you will receive a Certificate of Interest listing all numbers played in the Canadian Super 7 National Lottery and the dates of all

TAE5

202 Brownlow Avenue ~ PO Box 38090, Burnside Park ~ Dartmouth, NS B3B 2A1 ~ Canada

A cash prize payable to you is being held by this office. You have been awarded this payment in a sweepstakes by a multi-national concern to promote international trade in the new millennium, no purchase required.

More importantly, you have been cleared for admittance as a guaranteed winner in the $54,000,000 Canadian Super7 National Lottery prize pool.

What this means is that you are absolutely guaranteed to win a cash prize in this lottery.

prize money is guaranteed by the full faith and credit of the national government of Canada.

Senate Permanent Subcommittee
On Investigations
EXHIBIT # 5

Down The Road Pitch

This was basically an easy pitch. The way it started was a Loader (salesman who re-pitched clients) would call a client who had bought previously, probably numerous times, and had received 1, 2 or 3 insignificant gifts. He would then tell the client that he was selected to participate in an upcoming Award Presentation usually three to four months away. The Award Presentation was to be giving over one million dollars in cash and prizes away to the participants. Just for being selected, as one of the 25 winners, it would be receiving a preliminary prize (eg. TV, stereo, watches etc) these gifts, valued at about $200.-, would be paid for with the client's first cheque that would come in. To receive this money, the Loader would tell the client that the Company (e.g. Norstar Industries) had to show the sponsors of the "Awards Ceremony" that the client was a corporate customer of the Company, needing to show an invoice of (e.g.) $10,000. Sometimes the client would say, "but I already spent much.", so a good Loader would say "Yes, we know you spent (e.g.) $500 in the last 2 years, so your balance is only $4500.-. If the client spoke in the $4500.-, we would send him out the preliminary gift and sometimes a letter of confirmation telling them about this "so-called" Award Presentation.

Next, about 2 weeks later, the same Loader would call back the same client, lying to him, telling him that he was moved up in the standings, but needed a bigger corporate invoice, usually $10,000 - $15,000. If received, we usually sent out a bigger gift, about a $200 value and re-pitched them again, raising their standings again and so on and so on.

The Awards presentation, he would call the client (victim) and tell them that the date was moved back 2-3 months and try to get the client a couple of more times. Usually what ended the "Down the Road Pitch" was the client pulled himself out.

In closing, there was NEVER an Award Presentation, never a million plus in cash and prizes and we never sent a client any gift that he didn't already pre-pay for.

This was totally a "scam" and this was known by myself and everyone who worked for me or with me. I was the owner of Global Graphics, Norstar Industries, D-6 Canadian Wholesalers, International Clearing House, Platinum Industries and North America Trade Centre. I had a partnership with Jeff Spence and Mark Dolmierski in Platinum Industries and North American Trade Centre

DOWN THE ROAD PITCH

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Next, about 2 weeks later, the same Loader would call back the same client, Lying to him telling him that he had moved up in the standings, but needed a bigger Corporate Invoice usually $10,000 - $15,000

There was NEVER an Award Presentation, NEVER a million plus in cash and prizes and we NEVER sent a client any gift he didn't already pre-pay for.

This was totally a "SCAM" and this was known by myself and everyone who worked for me or with me.

Senate Permanent Subcommittee
On Investigations
EXHIBIT #___6___

TELEPHONE CONVERSATION BETWEEN
ANN HATHAWAY AND MARY THOMPSON
October 15, 1998

TAPE 1
Microcassette marked "10-15-98
Tornado Inv. - COPY AJM"

AH: ANN HATHAWAY:
MT: MARY THOMPSON

SIDE A:

AH: Well, hi, Mary, how are you? This is Ann. This is his daughter.

MT: Hi Ann. How are you doing?

AH: Hi....fine. Listen, I guess we missed some of your phone calls.

MT: Yes, I tried to reach him a while....all weekend....never home...

AH: Well, you know what. There has been some developments in my Mother's health and he had.....

MT: How is she cause I know she's in the center, right?

AH: Yes, she's at the Manor and ah.... Well, it's demanding him to be there....for quite a while....you know...he's there more he has to be or has had to be is what I'm trying to stay. But, I'm glad I didn't miss your call. Mary.....

MT: I just called about ten minutes ago and there was nobody home.

AH: I just walked in the door. I just walked in the door.

MT: Glad I called back. What is your name, dear?

AH: My name is Ann.

MT: Ann, ok. Your Father talked to me about you....

AH: Oh, did he....good, good.

MT: He told me you were a very nice woman.

AH: Well, I try to be. [Laughter] I have a very nice Father so that might attribute to it somewhat. Listen, Dad explained the situation here to me just briefly.

MT: Okay.

AH: And, ah, because of my Mother's condition its not been possible for him to get the signature that he needs.

MT: Okay.

AH: ...for the CD. And I understand ....like I said.....just a little bit....maybe you can clarify some of this for me...but ah....

MT: Okay, Ann, it's very simple. I'm going to explain to you from the beginning...

AH: Oh, well, thank you.

MT: Your Father.....your father [unintelligible...sounds like, "bad habit"].....to enter sweepstakes and lotteries [unintelligible].... You know those sweepstakes that you get by the mail?

AH: Right....

MT: ....$10, $20.....promise him winning now....

AH: Right...

MT: He lost... He sent quite a bit of money to those sweepstakes and lotteries....[??} in three years. Okay.

AH: Oh, okay.

MT: What happened...those companies are illegal. They promised him money....they never sent him anything. So, those companies were ceased ..... I've got the list here that I did send your Father. Those companies that were ceased. And those companies were brought to court. There was a class action suit done against them and finally they decided to....with the money they made with that...to send it back to some people in a lot of countries...

AH: Yeah...

MT: People from Australia, United States, Canada are playing those sweepstakes and lotteries. It's very hard for them to send like $10, $20 or $40 back to 30 million people. I would

have to call everybody and say, "okay, how much did you lose and we're going to send it back to you?" So what they decided to do instead is offer the court settlement of $110 thousand...ah...to about...let me see.....it's about 12 hundred people that are going to be getting they money. Okay.

AH: Yeah.

MT: Is Mr. Hathaway there?

AH: No, no, the stupid TV. I just got up and turned the TV off.

MT: Oh, okay.

AH: I'm sorry about that....

MT: What happened, dear, is very simple. When they did is that they called your Father up...there is an attorney by the name of Robert Duran...which I didn't know. They called him up and they told him about that story. And, they said, "listen, you have to pay taxes on that."

AH: Yeah...

MT: ....because it's coming from another country. So.....[??] United States Custom Office...so what we is we [??] come through [??) Mr. Duran and your Father sent him $2000 for his taxes because he is a senior citizen and he is able to pay the balance only after receiving the court settlement. But....at the United States Customs...there is Custom and Duties fee that need to be paid up at.....so he had to send some more money.....what happened is there is man by the name John Taylor which is in charge of that...called him up two weeks ago and said "Mr. Hathaway are you interested to claim another court settlement"...because there was another court settlement of $170,000 (or $117,000) that was available. Your Father said "Yes" but after a day...he thought about that and said "No, I can't because of my wife is in a nursing home and I won't be able to touch that money." Now, what happened is that Mr. Taylor reserved the court settlement for your Father so now it's impossible to cancel it because they put it with the first one....it's all by the laws and regulations that you have to do that....

AH: Yeah...

MT: So I tried to deal with them....they wanted your Father so send....let me see....cause the large amount was 78 thousand dollars. I told them, "listen, he doesn't have the money...he can't do it." So the IRS got involved...the IRS told me, "yes, he is able to do it because he's got a CD worth about [redacted]"

TELEPHONE CONVERSATION BETWEEN
ANN HATHAWAY AND MARY THOMPSON
October 16, 1998

TAPE 2
Microcassette marked "10-16-98 Copy"

AH: ANN HATHAWAY:
MT: MARY THOMPSON

SIDE A:

AH: Well, I'm glad...I'm glad I a hold of you....listen, I've been tied....we had to spend the night at the Manor with my Mother last night.....

MT: You okay?

AH: Ah, no.....no....things are not going well.

MT: That's why.....that's why thought.....you probably had to spend the night there....and...

AH: ...yeah, I was afraid so.....like I told you.....all of this and my involvement here is simply because my Father is just having to spend so much time there.....and we have not been able to.....she has not.....we can't even get a signature from her with his help.

MT: Oh, my goodness.....

AH: ....so that's why I'm having to get involved here. Um....I talked to my Dad like I told you...

MT: Okay....

AH: And...I guess we have a discrepancy here in figures.....I don't know if my anticipation....my excitement...if I misunderstood...or what....but, ah, when I told my Dad ....you know.....that I was going to take out $78,000....he said, "where in the heck did that figure come from."

MT: Okay.

AH: So.....

MT: What do you have as the figure? You have one court settlement of 110....you have one of 170....then you have two more settlements....one of.....

AH: Well, I don't remember you telling me anything about two other settlements....

MT: I told you two settlements that your Father already claimed....but the reason why is because there is two more settlements that he was ready to claim....and since he couldn't the money from the bank because....his money was tied up because your Mother being ill....he couldn't claim them. There are two settlements...one for 85 thousand...cause I don't have the figures in front of me.....one for 85 and the other one for....let me think....I believe it's for around 150 thousand.....yes, 150.....166 thousand to be exact.

AH: Well, and that.....my Dad sent you two checks....one for 2 thousand, one for 3 thousand?

MT: He send me....well, he didn't send me....he send....Canada...

AH: Well, I don't mean you, personally, Mary.....bare with me here....cause I'm still learning.....

MT: Okay... Send one check to Robert Duran for 2 thousand....and another check for insurance for the [unintelligible -- sounds like "bill to deliver"] the package.....cause you've got to understand...I didn't know that. And....Loomis....Loomis is the company that are going to bring that money to your Father. Okay....

AH: Okay....

MT: ....not by regular mail....and it's not going to be wired, neither....it's sent by a armored truck company...that armored truck company deal with the Canadian government....the named of the armored truck company...Loomis...L-O-O-M-I-S.

AH: Okay.

MT: Now, they want to charge him an insurance which will be reimbursed to your Father, of course. Okay. The insurance was something like $40,000...what they charged him....

AH: Now, is that the amount....he mentioned something....he didn't remember the exact figure....

MT: I think 43....I don't have the figure in front of me.....I would have go and get his file....

AH: But that one was wired...correct?

TELEPHONE CONVERSATION BETWEEN
BRUCE HATHAWAY AND MATT BRADLISS
Thursday 10/22/98 10:53am

TAPE 5
Microcassette marked
10/22/98 10:53am

BH: BRUCE HATHAWAY
MB: MATT BRADLISS

SIDE A:

Message left on answering machine by Ed Early???

Hello this is for Bruce Hathaway. This is attorney Scott Hall I'm the assistant for Mrs. Thompson. We need some news, if you can give us a call back by the end of the day. Thank you.

BH: He wanted me to make a major contribution in advance

MB: On the form you sent you indicated that you would be willing to donate 10% of winnings to the Christian Children's Fund, CCF Foundation. Right, that was on the form. So you don't have to send the full amount, the full amount is $20,000. I think what he was asking you for was $5,000

BH: No, he, he, was asking for 20

MB: Oh really

BH: Yeah

MB: You don't have to send all 20 at this point, the only thing you need to send is the deposit, the deposit of 5 and they'll send the award out, you should have it

BH: Well the only way I would go with you on this would be if you would send me the money and I'd agree to send you back the check or to send the check for that contribution. I think what he had suggested to me was I would send the contribution to ahh some foundation in another state. It was for children, right?

MB: Right, that's right

BH: But, uh I'm not in a position to make an advance like that, your talking about.

MB: Okay, we hold your contribution for three days should you decide to send your contribution, the next day your prize is sent to you. .Okay

BH: Well, if you want to send me something in writing on it. I'll consider it. But I...

MB: We sent you something in writing, could you find it?

BH: Beg your pardon?

MB: I have your signature in front of me so I know you have something in writing already, and the pledge is on there for 10%, so this is nothing new that I'm telling you, that you didn't know already or beforehand. It was on your form. But we have been holding on to your prize for over two weeks and we want to release your prize and it's over $200,000. Now if you don't want it, you just tell me you don't want it and I'll give it to a runner up and it doesn't matter to us, they will still get the contribution at the charity. But it's YOUR prize, you still get first crack at it. It's made out to for the address at [redacted] Columbus, and you are the only winner in Ohio.

BH: Yes

MB: So it's up to you, if you want it, just say you want it

BH: Well I can't make any kind of advance on it. I just don't have the money, my wife is in a nursing home. I have to pay over $4,000 a month to keep her there.

MB: Really so the money would really come in handy is that what your saying.

BH: If you can't

MB: Well look I'm trying to work with you...

BH: Just send me the check and trust me to make the contribution.

MB: Okay let me ask you this, while I got you on the phone, cos you are very hard to get a hold of, I just keep getting your answering machine or something.

BH: Would you repeat that.

MB: I said you are very hard to get on the phone, while I got you on the phone I want to try and finalize this now for you. You say the $5,000 your not able or willing to do that right now, right?

EXCERPT OF TELEPHONE CONVERSATION BETWEEN ANN HATHAWAY AND MARY THOMPSON
October 15, 1998

Mary Thompson: It's very simple Ann, I'm going to explain to you from the beginning.

Ann Hathaway: Oh, well, thank you.

Mary Thompson: Your father, your father has got a bad habit to enter sweepstakes and lottery companies. You know those sweepstakes that you get by the mail?

Ann Hathaway: Right.

Mary Thompson: You send ten dollars, twenty dollars, they promise you money now.

Ann Hathaway: Right

Mary Thompson: He lost...he, he sent quite a bit of money to those sweepstakes and lotteries within maybe three years, ok?

Ann Hathaway: Oh, ok.

Mary Thompson: What happened is that those companies are illegal. They promise him money, they never send him anything, so those companies were seized. I've got some lists here that I, I did send your father-

Ann Hathaway: Yes.

Mary Thompson: – of the companies that were seized, and those companies were brought to court. It was a class-action suit done against them, and finally they decided to, with the money they made with that, to send it back to (uh) some people in a lot of countries.

Ann Hathaway: Yes.

Mary Thompson: People from Australia, United States, Canada who were playing those sweepstakes and lotteries. It is very hard for them to send like ten, twenty, or forty dollars back to thirty million people. I would have to call everybody and say, "Ok, how much did you lose? We're gonna send it back to you." So what they decided to do instead is offer a court settlement of $110,000 dollars, ah, to about, ah, let me see, it's about 1,200 people that are going to be getting that money, ok? What they did is that they called your father up, there's an attorney by the name of Robert Duran, which I didn't know. They called him up, and they told him about that story. And he said, "Listen, you have to pay taxes on that."
Ann Hathaway: Yes.

Mary Thompson: Because it's coming from another country. So me, I'm at the United States Customs Office. So what we did is we confirm everything with Mr. Duran, and your father sends in $2,000 for his taxes because he's a senior citizen and he's able to pay the balance only after he receives the court settlement.

EXCERPT OF TELEPHONE CONVERSATION BETWEEN ANN HATHAWAY AND MARK DAVIS
November 25, 1998

[Ann Hathaway is on the phone during this conversation but does not speak.]

Mark Davis: Now, I know that (uh) you spoke with Mrs. (uh) Thompson, and she was expecting those payments, and all the time something happened. Now, you have to know that we're running late, and every day that passes by I'm paying interest for that money that is (uh, uh) held at U.S. Customs.

Mr. Taylor, an associate of Mark Davis, in the background: That's right.

Mark Davis: And here, at the law firm, we're not too crazy about this. So this is why I'm trying to find answers and I'm trying to find some solutions to get through this so you can have the money already.

Senate Permanent Subcommittee
On Investigations
EXHIBIT # 7

CENTER FOR INTERNATIONAL DISBURSEMENTS
OFFICE OF THE TREASURER
ADMINISTRATIVE ANNEX • 3219 YONGE STREET, SUITE 342
TORONTO, ONTARIO M4N 2L3 • CANADA

RE: JOYCE NOBLE
a resident of the United States
Claimant

DISPOSITION NO. 4093038356

NOTICE OF DISPOSITION:
CASH PAYMENT OF $7,500.00

DETERMINATION OF PAYMENT ELIGIBILITY

It is the conclusion of this office that the claimant named herein is fully vested with eligibility for a cash payment in the amount of $7,500.00 resulting from monies escrowed for disbursement to winners of an international sweepstakes as determined under Disposition No. 4093038356.

DETERMINATION OF CLAIMANT ENTITLEMENT

It is further the conclusion of this office that said claimant, upon remittance of due consideration, shall be entitled to further monetary and property awards eligibility such as shall be stipulated herewith, the final aggregation of which shall meet or exceed a sum total of $500,000.00.

DISPOSITIONAL SANCTION OF THE TREASURER

It is therefore sanctioned that, in accordance with the enclosed applicable terms and conditions, CLAIMANT SHALL BE PROMPTLY PAID THE SUM OF $7,500.00 CASH assuming the claimant possesses and returns to this office the winning Disposition Number. It is further sanctioned that said payment shall be made without deduction, withholding, or purchase requirement, and that purchase shall not increase claimants chances of winning any prize disposed by this sanction.

AUTHORITATION OF SANCTION.

William Douglas Flaherty III
Treasurer

IMPORTANT: YOU MUST COMPLETE AND RETURN THE DISPOSITIONAL SANCTION BELOW WITH THE ENTITLEMENT FEE SHOWN THEREON BEFORE THE DEADLINE TO RECEIVE THE ENTITLEMENT UNDER THIS DISPOSITION SANCTION.

DISPOSITIONAL SANCTION
CENTER FOR INTERNATIONAL DISBURSEMENTS • OFFICE OF THE TREASURER
ADMIN. ANNEX • 3219 YONGE STREET, SUITE 342 • TORONTO, ON M4N 2L3 • CANADA

DISPOSITION NO.
4093038356
HP0295

MAXIMUM PAYMENT AMOUNT PENDING
$7,500.00

DISPOSITION CLAIMANT

Joyce Noble
Caribou ME 04736

ACCEPTANCE OF ENTITLEMENT

I HEREBY ACCEPT THE ENTITLEMENT ACCORDED BY THIS SANCTION AND ALL SWEEPSTAKES MONIES HELD UNDER THE DISPOSITION NO. AT LEFT AND ACKNOWLEDGE THAT PURCHASE IS NOT REQUIRED, AND WILL NOT INCREASE CHANCES OF WINNING.

CLAIMANT: SIGN ABOVE

ENTITLEMENT ELIGIBILITY VALUE MANDATED
$500,000.00

ENTITLEMENT FEE $ 26.00

ENTITLEMENT FEE ENCLOSED ON THE FORM OF:
☐ CHECK ☐ MONEY ORDER

MAKE CHECK PAYABLE TO:
INTERNATIONAL DISBURSEMENTS

NOTICE OF DISPOSITION: CASH PAYMENT OF $7,500.00

It is the conclusion of this office that the claimant named herein is fully vested with eligibility for a cash payment in the amount of $7,500.00 resulting from monies escrowed for disbursement to winners of an international sweep-stakes as determined under Disposition No. 4093038356.

It is further the conclusion of this office that said claimant, upon remittance of due consideration, shall be entitled to further monetary and property awards eligibility such as shall be stipulated herewith, the final aggregation of which shall meet or exceed a sum total of $500,000.00.

CLAIMANT SHALL BE PROMPTLY PAID THE SUM OF $7,500.00 CASH

ENTITLEMENT ELIGIBILITY VALUE MANDATED $500,000.00

ENTITLEMENT FEE $ 26

CLAIMANT ADDRESS

AFFIX INTERNATIONAL AIRMAIL POSTAGE OR USE 2 FIRST-CLASS STAMPS

INTERNATIONAL AIR MAIL | PAR AVION

CENTER FOR INTERNATIONAL DISBURSEMENTS
OFFICE OF THE TREASURER
ADMINISTRATIVE ANNEX
3219 YONGE STREET, SUITE 342
TORONTO ONTARIO M4N 2L3 • CANADA

CENTER FOR INTERNATIONAL DISBURSEMENTS
OFFICE OF THE TREASURER

J. EDWARD VANDAARSIK
BUREAU CHIEF

To: Disposition Claimant
From: J.E. VanDaarsik
Subject: Claim requirements for $7,500.00 cash payment

Congratulations on the Treasurer approving your eligibilty for a cash payment in this matter. The $7,500.00 is being held safely in escrow and awaits only a winning Disposition number and valid entry to authorize its release.

It is my experience that respondents like yourself are sometimes uncertain about the authenticity of a prize like this. Please rest assured that this prize is real and we are required by law to disburse it to the winner.

Furthermore, regulations stipulate that we must receive your Dispositional Sanction form before the filing deadline, or you will forfeit your eligibility for this payment. We are not permitted to allow any exceptions on this matter.

However, please be aware that the entitlement fee shown on your Dispositional Sanction form is required to effect your eligibility for further cash and property award opportunities amounting to over $500,000.00.

Therefore, as Bureau Chief, I urge you to return your Dispositional Sanction form and entitlement fee within 10 days. This will ensure your entitlement and filing are processed in time to prevent any accidental forfeiture due to a late response.

Again, our compliments and best wishes for continued good fortune. Please complete your Dispositional Sanction form and return it in the envelope provided today.

/JEV

IDUM

Congratulations on the Treasurer approving your eligibility for a cash payment in this matter. The $7,500.00 is being held safely in escrow and awaits only a winning Disposition number and valid entry to authorize its release.

Furthermore, regulations stipulate that we must receive your Dispositional Sanction form before the filing deadline, or you will forfeit your eligibility for this payment. We are not permitted to allow any exceptions on this matter.

Senate Permanent Subcommittee
On Investigations
EXHIBIT #8

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UNITED STATES - CANADA COOPERATION AGAINST CROSS-BORDER TELEMARKETING FRAUD

REPORT OF THE
UNITED STATES - CANADA WORKING GROUP

TO

PRESIDENT BILL CLINTON **PRIME MINISTER JEAN CHRÉTIEN**

NOVEMBER 1997

REPORT OF THE UNITED STATES-CANADA

WORKING GROUP ON TELEMARKETING FRAUD

EXECUTIVE SUMMARY

During meetings on April 8-9, 1997 in Washington, D.C., President Clinton and Prime Minister Chrétie directed officials to prepare a joint study examining ways to counter the serious and growing problem of cross-border telemarketing fraud. This Report results from meetings and research conducted by la enforcement and policy officials from various feder and state/provincial agencies of the United States an Canada.

Telemarketing fraud has become one of the most pervasive forms of white-collar crime in the United States and Canada, with annual losses in both countries in the billions of dollars. In recent years, authorities have observed concentrations of offende in metropolitan areas including Las Vegas, Los Angeles-Orange County, Miami-Fort Lauderdale, Montreal, Toronto and Vancouver.

Telemarketing criminals frequently prey upon seni citizens, although all age groups have been victims. Many elderly victims have lost life savings to these criminals, with a loss of quality of life which is often physically and psychologically devastating, not only to the victims, but also members of their families.

"Telemarketing fraud" describes the use of telephones to deprive victims dishonestly of money

property or to misrepresent the values of goods or services. Low-cost telecommunications have made legitimate telemarketing popular, but also provide a means of conducting massive frauds, sometimes involving thousands of victims and tens of millions dollars in losses.

The large numbers of victims and distances involve make telemarketing frauds costly and complicated t investigate and prosecute, especially when they are committed across national borders. Differences in legislation and procedural delays created by mutual legal assistance and extradition proceedings create further difficulties. The long distances and multiple jurisdictions involved in many cases highlight the need for effective co-operation among the governments and agencies involved as well as the private sector.

The Report examines: the ways in which telemarketing fraud is committed; legal issues and options; consumer education and prevention; and cross-border cooperation and strategy. It concludes that telemarketing fraud is a serious and expanding problem, and that cross-border cases are a challeng for both governments. With a sound strategy and th right combination of tools and tactics, the United States and Canada can cooperate even more closely to meet the increasingly international challenge of this most pernicious of white collar crimes.

The key recommendations of the Working Group follow this Executive Summary.

SUMMARY OF RECOMMENDATIONS

The Working Group recommends:

- that the governments and agencies of both countries clearl identify telemarketing fraud as a serious crime (p. 7);
- that both countries explore the use of remote testimony in criminal proceedings, by video-teleconferencing or similar means, to reduce costs (p. 15);
- that the legal and technical potential and limits of electroni surveillance as a tool against telemarketing fraud be explored further (p. 18);
- that both governments examine the regulation of telephone services and options for denying telephone services to telemarketing offenders (p. 19);
- that the scope of the existing mutual legal assistance arrangements be considered to determine whether they might be expanded to deal more effectively with telemarketing-fraud cases (p.20);
- that both governments clarify the circumstances under which mutual legal assistance requests are needed, by providing information and advice to the agencies involved

(p. 20);

- that extradition arrangements be examined, and if possible modified, to facilitate and accelerate extradition in telemarketing fraud cases (p. 21);

- that federal deportation laws which might apply to foreign nationals engaging in telemarketing fraud be reviewed, an that enforcement agencies be given information about when deportation may be an option (p. 21);

- that research be conducted into offenders, victims and othe aspects of telemarketing fraud to create effective educatio materials and strategies to prevent it (p. 21);

- that governments and agencies cooperate as closely as possible in developing, maintaining and disseminating educational materials, and in coordinating education and prevention efforts (pp. 21-22);

- that strategies to control telemarketing fraud be coordinate between the United States and Canada at the agency, regional and national levels (p. 25);

- that an ongoing binational working group serve as an over coordinator and deal with national and binational telemarketing fraud issues as they arise (p. 28);

- that regional task-forces be encouraged to cooperate acros the international border to the maximum extent possible (p 29); and

- that, to further coordination, governments and agencies examine privacy and other laws relevant to cross-border shared access information systems with a view to expanding access to such systems to the maximum extent possible (p. 30).

1. INTRODUCTION

The growing availability of telephone and other communications facilities provides opportunities for many forms of interaction and commerce. Telemarketing, the use of telephones to market goods and services, has grown rapidly. In recent years, total sales in the United States and Canada have exceeded US$400/C$500 billion per year. Most telemarketing activities are legitimate, but some, unfortunately, are not. Telemarketing fraud has become one of the most pervasive and problematic forms of white-collar crime in Canada and the United States, accounting for as much as 10% of the total volume of telemarketing.

On April 8, 1997, Prime Minister Chrétien and President Clinton directed their officials to establish the Binational Working Group to examine the problem and report on ways to address it. The Working Group was asked to survey measures already in place and recommend further steps. As a result, it examined each country's legislation, legal procedures, enforcement practices, and education and prevention efforts, and has developed recommendations for cooperative and coordinated strategies to deal with cross-border telemarketing frauds. The Binational Working Group has prepared this Report pursuant to its mandate, in a spirit of mutual commitment to address a serious problem that affects the citizens of both countries.

"Telemarketing fraud" is used in this Report to describe a range of activities in which telephones are used to deprive victims dishonestly of money or property or misrepresent the true values of goods or services on offer. This covers a range of offenses under Canadian and U.S. law. It is intended to describe the general problem as encountered by law-enforcement agents, regulators and prosecutors in the United States and Canada.

Criminals in both countries have been drawn to the offense by large proceeds and relatively low risks of detection, prosecution, and punishment. Since the early 1980s, as low-cost telecommunications made the telemarketing of legitimate goods and services increasingly popular, offenders have recognized that it also provided an effective means of conducting potentially massive frauds. The large number of victims who can be targeted using telephones vastly increases potential proceeds. A single telemarketer with a well-organized scheme can easily contact hundreds of victims, and organized groups can target thousands, particularly if a scheme continues for any length of time before being detected and stopped. Losses to each victim run from hundreds to thousands of dollars, and in some cases to much more. A single offender can easily earn several hundred thousand dollars per year, with larger "boiler room" operations extracting tens of millions of dollars.

The use of telephones also enables criminals to target victims at long distances, and across provincial, state and international borders. This ability highlights differences between legal systems and usually involves more elaborate arrangements for law-enforcement cooperation. It generally complicates investigations and prosecutions and increases the costs and length of time needed to bring offenders to justice or recover proceeds. The nature and growth of telemarketing fraud have made trans-boundary offenses more frequent, which now places new demands on traditional Canada-U.S. legal cooperation.

The Working Group reviewed evidence drawn directly from the substantial practical experience of its members, the officials of both countries who deal with the problem personally. The Working Group believes that more structured research on telemarketing

fraud is called for, but the evidence it has already seen is compelling.
The evidence clearly demonstrates that telemarketing fraud is a serious economic crime problem. The devastating consequences it has for some of the
most vulnerable citizens of the United States and Canada require that immediate and effective steps be taken.

The Working Group examined the problem of telemarketing fraud from three perspectives: legal matters, public education and prevention, and cooperation and
strategy. The Report addresses these in separate sections. The Working Group cautions that there is no simple solution to telemarketing fraud: a truly effective
response must draw elements from all three areas. It is hoped that this Report will lay the foundation for a joint program of effective measures to benefit both countries'
populations.

2. THE OFFENSE

Telemarketing fraud has existed, in one form or another, for many years, but it has expanded significantly since the early 1980s. In recent years, authorities have observed concentrations of offenders in major metropolitan areas throughout North America, including Atlanta, Houston, Las Vegas, Los Angeles-Orange County, Miami-Fort Lauderdale, Montreal, Tampa-St.Petersburg, Toronto and Vancouver. Telemarketing fraud is a dynamic phenomenon: when authorities in one region crack down, offenders who are not caught often simply go elsewhere and start new schemes or in some cases, turn to other forms of crime.

2.1 CHARACTERISTICS OF TELEMARKETING FRAUD

Telemarketing fraud, like other frauds, depends on the offenders' use of deception to obtain money or property from their victims, but it has a number of unique characteristics.

- **Offenders require telecommunications facilities.**

  Telephones are an indispensable tool for offenders. They allow the offenders to limit and manipulate information, concealing information about themselves while passing on whatever will deceive the victim. They also permit offenders to reach large numbers of victims quickly and at long distances. Not all of the technological advantages fall to the offenders, however. The use of telephones creates opportunities to attack the problem. Calls can be intercepted, traced back to offenders, and recorded for use as evidence, for example.

  Offenders use their ability to manipulate what victims hear to maximum advantage. The objective is to establish credibility and rapport while conveying the misinformation needed to persuade victims to part with funds, overcome objections or dissuade them from seeking information or advice elsewhere. As one telemarketer boasted:

  What you're doing as a salesman . . . is painting a picture. Soon as they pick up the phone, and I get on the phone with them, my hand is on the way. . . . [T]wo hands go through that phone. One hand goes up to the wall and starts painting pictures, the other hand is in their checkbook . . . and writing it out.

  They may use blatant lies or more subtle misrepresentations:

  "One [of] my best, best lines . . . works great: 'Thelma, I can't tell you what you're getting but I sure hope you live long enough to enjoy it all."

  The lack of face-to-face contact allows offenders to impersonate government and corporate officials to increase credibility, and in some cases, to coerce reluctant victims. Offenders often use false names, and victims can only identify them by voice, if at all, creating a serious obstacle for investigators and prosecutions.
  Telephones also create economies of scale by allowing a single caller to target a large number of victims in a short time and at long distances. Offenders maximize proceeds by focusing on target-groups most easily victimized, and by making large numbers of calls quickly, focusing on those who appear susceptible and hanging up

on those who resist.

A key to successful telemarketing fraud is convincing victims to pay quickly, so offenders receive the funds before victims can have second thoughts or seek advice. To get the money before victims can reconsider, offenders often use telephones to process credit-card transactions, or arrange for couriers to pick up checks or money orders directly from victims' homes. Telephones are also used for follow-up calls where victims do not pay promptly. In some schemes, offenders have victims send payments to commercially-rented "drop boxes", which can make tracing funds more difficult.

- **Offenders do not have to be near victims.**

Unlike other frauds, telemarketing offenders and operations do not have to be near their victims. This creates two major concerns: the dispersal of victims over wide areas complicates investigation and prosecution, and the victim-offender distance makes it possible for offenders to relocate when necessary to maximize benefits and/or minimize risks. Offenders know this and act accordingly: agencies cited cases where callers avoided near-by victims or had lists of "do not call" jurisdictions, where enforcement activities were rigorous or active at the time, posted prominently in their work areas.

The distances between offenders and victims raise other concerns:

  - the dispersal of victims conceals the true numbers of victims and total proceeds of most frauds,
  - the distance and lack of personal contact between victims and investigators can hinder efforts to determine important information about victims and the serious impact of the offense, particularly elderly victims defrauded of life-savings,
  - the dispersal of victims substantially increases the costs of the travel and coordination needed to investigate and prosecute cases, and,
  - the dispersal of victims complicates and delays investigation and prosecution as new victims, jurisdictions, and agencies are identified and operations must be coordinated.

- **Offenses can be committed across provincial, state, and national boundaries.**

Cross-border telemarketing fraud generates many of the same problems associated with the dispersal of offenders and victims, but the problems are magnified by differences in legislation and by national sovereignty. Cooperation between agencies becomes more formal and complex when they are in different jurisdictions. Mutual legal assistance (MLAT) requirements sometimes apply to investigative procedures, and international extradition is necessary to bring offenders into victim-jurisdictions for trial. This adds to costs and creates significant delay, a major concern when victims are elderly. Legislative discrepancies may also complicate getting evidence gathered in one jurisdiction before a court in another.

- **Telemarketing fraud is a form of organized criminal activity**.

Telemarketing fraud usually involves the organization, pre-planning and coordination of individual offenders which is characteristic of organized criminal activity. In some cases, the high profits have also attracted members and associates of traditional criminal organizations. To operate a large telemarketing scheme, it is necessary to set up a "boiler room" equipped with a large number of telephone lines, employ callers to

contact victims, provide callers with lists of information about prospective victims (called "mooch lists" or "sucker lists"), set up means to collect proceeds and, often, to set up safe "drop boxes" to make tracing proceeds difficult.

This care and pre-planning complicate matters for investigators. Schemes are often crafted to make them appear legitimate or to make elements of the offense difficult to prove. Such schemes are difficult to shut down completely unless all key members are identified, caught, convicted, incarcerated or incapacitated and stripped of their illegal gains. Offenders have used proceeds to fund defence litigation or fight prosecution or extradition. One telemarketer recently told a prosecutor:

I'd rather spend a million dollars fighting extradition than paying it back in restitution [to the victims].

- **Victims are chosen for certain characteristics, especially age.**

Victims are not created at random or by accident. They are chosen by the offenders themselves because they are vulnerable in some way and because they have enough money or assets to be attractive. Victim-selection can be done directly, by researching specific information about victims or buying "mooch" or "sucker lists" from other offenders or list-brokers. It can also be done indirectly, by getting potential victims to come forward in response to some form of general solicitation such as a "prize promotion", or "cold-calling" large numbers of people at random with some offer to which those who are vulnerable are likely to respond. Those already on

"mooch" or "sucker" lists are seen as willing to send money to similar schemes in the past and are more likely to be targeted again.

The Working Group noted one particularly striking characteristic of telemarketing fraud: those at the highest risk of being victimized are those who have already been victimized in the past. Once an individual has been identified as vulnerable, offenders will repeatedly target him or her until all assets are gone. Offenders not only re-use the victim information, they also commonly sell it to other offenders or brokers of such information.

Senior citizens in both countries are over-represented among victims, and offenders have admitted to targeting them specifically. The evidence indicates that offenders believe older people have more assets and are more susceptible to techniques such as excitement tactics or appeals to altruism. Agencies in both countries agreed that those who lost large amounts were more likely to be of retirement age or older, and that victimization tended to increase with age. A 1996 survey by the American Association of Retired Persons (AARP) showed that while 36 percent of the adult population is age 50 or older, 56 percent of the victims were 50 or older.

The elderly are not only more susceptible, they tend to be more seriously affected when they are victimized. Investigators reported many cases where victims had lost most or all of their life savings. Some had lost their homes or been forced to sell them to meet day-to-day living expenses. Unlike younger people who can work over a number of years to replace lost assets, the elderly usually are not in a position to do so. The loss of quality of life or standard of living can be physically and psychologically devastating and irreversible, and victims may become suicidal as a result. Families also feel the impact indirectly, if they are called upon to support a formerly self-sustaining senior citizen.

The Working Group noted the following problems associated with older victims of telemarketing fraud:

- Older victims often experience shame or embarrassment about losing large amounts. They may be reluctant to report the crime to relatives or to the police, and
  perhaps reluctant to testify about it later. Some may fear that, if they tell relatives, they will be seen as incompetent and lose control over their affairs.

- Older victims may be unable to recall details of the fraud, or be unable or unwilling to explain the true impact on their lives. This can conceal the seriousness of the
  offense from friends, relatives, police, and the courts which sentence offenders.

- Older victims sometimes die or become incapacitated before they can testify, particularly where the accused must be extradited before they can be prosecuted.

Older victims are often physically unable to travel to testify at trials held in the jurisdictions of the offenders or other victims.

The Working Group is concerned that because fraud victims are induced to cooperate in their own losses, those who have never talked to victims or offenders personally may blame the victims or hold them partly responsible, suggesting that victims "brought it on themselves," were "just greedy," or should have been more prudent. The reality is more complex. Telemarketing fraud involves the victimization of innocent persons by dishonest or deceptive conduct. This is a crime in every jurisdiction in Canada and the United States, and it is important that it be clearly labelled as such. The Working Group recommends that the governments of both countries and their representative agencies clearly identify telemarketing fraud as a serious crime, and that public information and educational materials include this clear and unambiguous statement as a central theme.

2.2 THE REAL FACE OF TELEMARKETING FRAUD: HOW VICTIMS ARE DECEIVED

Evidence from fraud investigations shows that telemarketing schemes use a wide variety of influence techniques, ranging from friendly conversation to outright demands or even threats, to persuade victims to part with their money. Many calls include the following elements intended to mislead victims and secure their compliance.

- **Excitement**. Schemes often begin with statements to excite the victim, interfering with the ability to think clearly and calmly. In the words of the offenders themselves:

  ...if you sound excited about it, then they're gonna get excited about it.

  [To victims:]...you were involved in a [promotional] campaign, you were promised to receive some very large corporate award, do [you] remember that? . . . Great. Sit down. They told ya the man in charge of the place would be callin' ya. Well, that's me. Take a deep breath and don't be nervous. [To interviewer:]...I just scare the [expletive] out of 'em right into it.

- **Claims of Authority**. Offenders often falsely claim that they hold a position of high authority in some organization or as a government official:

  I make them understand the importance of my position, being the . . .

promotional director. . . . And right off the bat they're excited . . . because when [it's] the owner, they think of you as the higher source.

Impersonating government officials can also serve as the basis for subtle or even brazen coercion. Offenders posing as tax or customs officials, for example, sometimes "remind" the victims that they are under legal obligation to pay taxes on the funds the offenders falsely state will be paid to the victims.

- **Pretense of Friendship**. Victims have described calls in which offenders ingratiated themselves as quickly as possible by convincing them that the offender was sincerely interested in them on a personal level. One woman told authorities that she did not agree to send money to one telemarketer until he had spoken with her eight or nine times. Another spoke of a telemarketer who pretended to share personal details with her about his own wife and children. Others have been sent modest gifts, such as flowers, to reinforce their belief that they were dealing with friends. Isolated and lonely victims are seen as particularly vulnerable to such tactics: offenders have told police their ideal "mark" is an elderly person, home alone, with no contact with family members.

- **Urgency.** Offenders routinely include an element of urgency in their pitches, stressing that the prize, investment, or other item being offered will not be available unless the victim sends the funds quickly. This puts pressure on the victim to react before thinking the proposal over. It also gives the offender an excuse for collecting the funds using couriers, wire-services or credit-card transactions before the victim has second thoughts or gets independent advice.

The ultimate purpose of these tactics is to persuade the victim, through false and deceptive means, to part with money or assets, either in return for some benefit or out of altruism. The following are some of the most common schemes considered by the Working Group.

- **Advance-fee Loan or Credit Schemes.** Telemarketers seek out people with bad credit and offer them loans or credit cards in exchange for fees. Victims offered loans never receive them. Victims offered credit cards usually only get a standard application form or generic information on how to apply.

- **Foreign Lottery Schemes.** Telemarketers offer victims the opportunity to "invest" in tickets in well-known foreign lotteries (e.g., Canada or Australia), or give them a "one in six" chance of winning a substantial prize. This is a common cross-border offense, since it plays upon the ignorance of victims of the rules (or even the existence) of foreign lotteries. If offenders purport to sell real lottery chances but deceive victims about their chances of winning, it may be both a gambling offense and fraud; if real chances are sold without deception, it may still be a gambling offense.

- **Investment Schemes.** Victims are sold "investments" in a wide range of merchandise or securities that appear to offer high profit-margins. The fraud lies in
misrepresenting the true value (or actual existence) of what is being sold, and/or the true extent of the risk in buying it. Common "opportunities" have involved stocks or securities, investment-grade gemstones, precious or strategic metals or minerals, and business opportunities such as oil and gas ventures, pizza ovens, and ostrich farms. These schemes commonly defraud victims more than once (see "reloading", below). Once funds have been committed, the victim can be induced to make additional payments to increase the value of the "investment" or avoid its loss (e.g., "margin calls"). Since legitimate investments normally tie

up assets for extended periods, victims often do not realize for some time that they have been defrauded.

- **"Prize-Promotion," "Gimme Gift," or "Cheap Gift" Schemes.** Telemarketers "guarantee" that the victims have won valuable prizes or gifts, such as vacations or automobiles, but require victims to submit one or more payments for non-existent shipping, taxes, customs or bonding fees, or anything else the offender thinks plausible. Some schemes never provide their victims with any prize or gift, while others provide inexpensive items, often called "gimme gifts" by U.S. telemarketers and "cheap gifts" by Canadian telemarketers.

- **"Telefunding" Schemes.** These prey on the charity of victims, soliciting donations for worthy causes, such as antidrug programs or victims of natural disasters. The pitch may simply ask for donations, or it may include other inducements, such as donor eligibility for valuable prizes which never materialize (see "prize promotion" schemes, above). Charitable donors do not usually expect something in return for their contribution, and may thus never become aware that they have been defrauded.

- **Travel-Related Schemes.** Fraudulent telemarketers purporting to be travel agencies offer substantial travel packages at comparatively low cost. The use of travel as a commodity makes the long-distance nature of the transaction plausible. The fraud usually involves lies, misrepresentations, or non-disclosure of information about the true value of travel and accommodations, limitations or restrictions on when or where purchasers may go, or what awaits them at the destination. In some cases, the travel proves to be a complete fabrication or has so many terms and conditions as to be completely unusable.

- **"Reloading" and "Recovery Room" Schemes.** These target the same victims again and again. Persons victimized once are most likely to be deceived repeatedly. Unfortunately, victims' understandable desires to recover their original losses make them more vulnerable to further schemes. This is known as "reloading" or "loading." Those who "invest" money are "reloaded" for more to protect or increase their investment, those asked for customs or shipping fees are "reloaded" for additional charges, and those who give to a spurious "worthy cause" are often "reloaded" for further donations.

  "Recovery room" schemes exploit the victim's desire to recover losses from previous frauds. Offenders, often from the same organization which defrauded the victim in the first place, call with inside knowledge of the fraud and a promise to recover the losses if "taxes" or "fees" are paid. A common tactic of callers is to represent themselves as law-enforcement or other government or professional employees (e.g., bank or stock-exchange officials), using inside knowledge of the victim and the fraud to establish credibility. "Recovery room" operations frequently deprive victims of their last remaining funds.

3. LEGAL ISSUES AND OPTIONS

3.1 CONSTITUTIONAL JURISDICTIONS

The constitutions of Canada and the United States allocate legislative and prosecutorial powers between the federal and state/provincial governments differently. This affects the structures and coordination of strategies in each country and between the two countries. Differences in government structures and terminology must also be borne in mind when reviewing the legal tools available.

- **In Canada**, the power to make criminal law is exclusively federal, but provinces can create offenses necessary for matters over which they have jurisdiction. This includes "property and civil rights", which most provinces have used to regulate local commerce and deceptive trade practices. Fraud and other federal Criminal Code offenses are prosecuted by the Provincial Attorneys General, but federal offenses under other statutes (Competition Act, Income Tax Act, Customs Act, Telecommunications Act) are prosecuted federally. 1997 Criminal Code changes created a new federal jurisdiction to prosecute Criminal Code offenses committed by "criminal organizations", which would include most telemarketing cases.

- **In the United States**, both state and federal governments have authority to enact criminal, quasi-criminal, and civil statutes: the states, for conduct or effects within their borders, and the federal government, for conduct that Congress may regulate under one or more of the broad grants of power under the Constitution (e.g., the power to regulate interstate and foreign commerce). Both levels of government may act to prohibit, regulate or prosecute fraudulent telemarketing activities.

3.2 CRIMINAL AND QUASI-CRIMINAL POWERS AND OFFENSES

Telemarketing fraud, as noted, includes a range of schemes which may violate multiple criminal, quasi-criminal or civil statutes in both countries.

3.2.1 - Canada

Fraud-related *Criminal Code* offenses. The Criminal Code makes basic fraud (dishonest deprivation) an offense: s.380(1) includes cases where either "...the public or any person" is defrauded, which allows for charges based on single transactions or a single "defrauding the public" charge where large numbers of victims are targeted. The offense is punishable by up to 10 years if the value exceeds C$5,000. Canada has no Criminal Code offense of using telecommunications systems to commit frauds, but does have an offense of using the mails (s.381). Expanding this to include telecommunications media would provide an additional offense which could be used in telemarketing cases, and this is presently under consideration.

34 other sections of the Criminal Code (ss.380-414) create fraud offenses which apply in specific circumstances. Some deal with commodities (stocks, ss.383-84, real property, ss.385-86, minerals, s.394), and others with the means of commission (fraudulent title documents, receipts, impersonation). Offenses other than fraud may also apply in some cases. For example, both fraud and gambling offenses may apply to schemes involving the sale of dubious lottery tickets. (ss.206-07).

Other federal offenses. Federal offenses in statutes other than the Criminal Code are considered criminal offenses in Canada, but are prosecuted by the federal Attorney-General, not the provinces. Those applicable to telemarketing fraud include the following.

- ***Competition Act.*** This contains a series of offenses dealing with misleading advertising and deceptive marketing practices. They are strict liability criminal offenses, for which the Crown does not have to prove the intention to mislead or defraud. The law provides for unlimited fines (up to C$500,000 have been imposed) and imprisonment for up to 5 years. The Act also provides for search and seizure, compulsory production or disclosure of information and other enforcement powers.

  Apart from the Criminal Code offenses, telemarketing fraud generally falls within the federal Competition Act and the mandate of the Industry Canada's Competition Bureau, the agency responsible for enforcing the Act. Legislation introduced by the Industry Minister in November 1996, which was not enacted by the end of the 1996-97 session, proposed to create a specific offense of "deceptive telemarketing". This would require telemarketers to make full and fair disclosure of whatever was on offer and to criminalize misleading or material non-disclosure. The proposed amendments also included provision for injunctions against telemarketers and service-providers which could be used to disconnect or block telephone service in some cases. Similar legislation is presently under consideration, and the Minister proposes to reintroduce it during the 1997 fall session.

- ***Income Tax Act.*** This requires employers to retain and remit funds for employee taxes and benefits (e.g., pension contributions) and provides offense and recovery provisions when this is not done. Ss.238-39 of the Act also contain basic offenses dealing with tax evasion and filing or providing false or misleading information.

- ***Excise Tax Act.*** Canada has a national Goods and Services Tax (GST, or HST - "harmonized sales tax", in some provinces). Those who provide goods or services in excess of C$30,000 per year are required to register with Revenue Canada and report dealings on an ongoing basis.

  Customs Act and Customs Tariff. These require the declaration (with accurate values) of goods entering Canada. Failure to comply is an offense which may apply in some cross-border merchandise frauds.

  Federal proceeds of crime and money-laundering provisions. Part XII.2 of the Criminal Code provides a comprehensive scheme for the tracing, recovery, seizure and forfeiture of proceeds. The scheme is invoked for all "enterprise crime offenses", which (s.462.3) include the basic fraud offense. Actions taken to "launder" funds which are proceeds of crime are also an offense (s.462.31).

  Organized crime offenses and powers. 1997 Criminal Code amendments created a new offense of participating in a criminal organization and expanded powers to investigate and prosecute "criminal organization offenses". This includes any fraud involving five or more offenders, which will catch most telemarketing fraud cases. Expanded powers include electronic surveillance and search and seizure provisions. Offenses committed by criminal organizations can be prosecuted by either the federal government or the provinces. Court orders can be used to bar those charged or convicted from taking part in crime-related activities, and might be used to deny access to telemarketing equipment.

  Provincial offenses. Canadian provinces have no power to enact criminal law, but may create offenses dealing with "property and civil rights", which includes many commercial activities. Eight of the ten provinces have enacted offense and regulatory

provisions dealing with unfair or deceptive trade practices. These are minor in comparison with the Criminal Code fraud offenses and punishments, but are also subject to a lower procedural standard under the Canadian Charter of Rights and Freedoms, which makes them easier to prosecute. Maximum fines range from C$2,000-100,000, with imprisonment up to three years. Conduct such as inflating prices or taking advantage of particularly vulnerable consumers, not usually elements of fraud, are included in several.

3.2.2 - United States

Fraud-related federal offenses. Federal criminal law in the United States includes a number of statutes that apply to telemarketing fraud, each of which has a basic maximum penalty of five years' imprisonment. The most frequently used are mail fraud (18 U.S.C. § 1341) and wire fraud (18 U.S.C. § 1343), which prohibit the use of the mails or wire communications in a fraudulent scheme, and the general conspiracy statute (18 U.S.C. § 371). Under established case law, everyone in a scheme (owners, managers or salespeople) is criminally liable not only for the conspiracy or personal acts of fraud, but also for all foreseeable criminal acts of co-conspirators.

Other fraud-related federal offenses which have been used in telemarketing fraud prosecutions include: identification fraud (18 U.S.C. § 1028), which prohibits the misuse and unlawful transfer of identification documents such as Social Security cards; credit card fraud (18 U.S.C. § 1029), which prohibits obtaining or trafficking in credit card information with intent to defraud; transportation of property taken by fraud (US$5,000 or more) across state or national boundaries (18 U.S.C. § 2314); use of false names in mail-fraud schemes (18 U.S.C. § 1342); and financial institution fraud (18 U.S.C. § 1344), which broadly prohibits schemes to defraud financial institutions.

Other federal offenses. Like Canada, the United States has several other statutes that apply to telemarketing fraud, including the following.

Tax Offenses. Income-tax offenses may apply where offenders do not report or under-report income, or where false information is given: 26 U.S.C. §§ 7201 (attempt to evade or defeat tax), 7203 (wilful failure to file return), 7206 (fraud and false statements), and 7207 (fraudulent returns, statements, or other documents).

Lottery Offenses. Two federal criminal statutes deal with foreign lottery-related material. 18 U.S.C. § 1301 contains multiple prohibitions on importing or transporting tickets and related materials, and 18 U.S.C. § 1302 deals with sending or delivering such materials (including funds to purchase tickets) by mail.

Money Laundering and Proceeds of Crime. 18 U.S.C. §§ 1956 and 1957 prohibit laundering proceeds of crime, including mail, wire and other frauds. The Department of Justice can also obtain criminal forfeiture of proceeds, if it can prove laundering and link the proceeds and the original offenses.

Forfeiture. In addition to the opportunities for criminal forfeiture noted above, the Justice Department is supporting legislation in the U.S. Senate which would extend the forfeiture powers directly to various telemarketing fraud offenses, broadening federal powers to seek forfeiture in such cases.

Sentencing provisions. U.S. federal courts apply Sentencing Guidelines which authorize longer sentences for frauds that cause greater losses to victims. Total proceeds, numbers of offenders and numbers and ages of victims are all taken into consideration. The owner of a fraudulent telemarketing business, using five or more telemarketers, which took in more than US$200,000 primarily from senior citizens might be

subject to imprisonment for 41-51 months, whereas the owner of a similar fraudulent telemarketing business which took in more than $1.5 million might be subject to imprisonment for 63-78 months.

A 1994 penalty enhancement statute (18 U.S.C. § 2326), provides for up to an additional five years' imprisonment in some federal telemarketing fraud cases, and up to 10 additional years if the offense targeted persons over 55 or victimized more than 10 persons over 55. The U.S. Congress is now considering legislation to increase punishments for persons conducting a scheme to defraud U.S. residents from a foreign country.

State criminal laws. Each state has the power to make criminal laws for conduct within, or having effects within, its borders. Two general categories apply to telemarketing fraud. First, each state typically has one or more general fraud statutes. Second, 27 states have specific statutes imposing regulatory requirements (e.g., business registration, licensing of salespeople, posting bonds) on telemarketers doing business within their borders, with criminal penalties for failing to comply. Penalties differ from state to state and with the seriousness of the offenses.

Although state legislatures enact these measures, city or county prosecutors frequently enforce them. In some states these prosecutors have concurrent jurisdiction with state Attorneys General to do so. In 23 states, the Attorneys General have no statutory power to prosecute criminal telemarketing, but city or county prosecutors may designate or deputize state Attorneys General to do so, an approach used in Iowa. Under any of these approaches, the states have criminal authority to prosecute telemarketing fraud that can operate concurrently with federal authority.

3.3 EVIDENCE LAWS AND PROCEDURES

The Working Group did not consider or identify any specific shortcomings in the evidence laws of either country, but it is concerned that substantial distances between investigators, victims and courts and the reduced ability of some older victims to travel can create obstacles and add costs to successful prosecutions. One partial solution considered was allowing victims or other witnesses to testify by live video teleconferencing or videotape in appropriate cases. There do not appear to be any insurmountable legal or constitutional obstacles to live videoconferencing in either Canada or the United States, provided that the basic rights of accused persons are protected.

The Working Group recommends that both countries explore legal and technical avenues towards the use of remote testimony in criminal proceedings, by video-teleconferencing or similar means.

In Canada, amendments to the Canada Evidence Act and Criminal Code dealing with video-link evidence are presently under consideration. To make such testimony feasible, video facilities close to victims will be needed, and may already exist in various government agencies and regional offices. The U.S. Department of Justice and Royal Canadian Mounted Police are compiling lists of suitable video conference facilities operated by law enforcement agencies which would be suitable for taking testimony or conducting interviews.

3.4 REGULATORY ENFORCEMENT

In both Canada and the United States, administrative agencies at the federal and provincial/state levels have powers to regulate general trade and commerce which

can be used to control telemarketing and prohibit unfair or deceptive practices. As noted above, the organization of agencies and legislation differs due to constitutional and governmental factors, although the types of conduct regulated or prohibited are similar in both countries. In Canada, regulatory provisions can fall within the federal criminal law power, and the federal Competition Act is regulatory legislation enforced by a combination of administrative and criminal powers. U.S. agencies such as the Federal Trade Commission (FTC) use administrative or civil proceedings to enforce their regulations directly, and refer criminal allegations to the Department of Justice. The Canadian provinces have the primary responsibility for enforcing and prosecuting the federal Criminal Code, and can apply a combination of quasi-criminal, regulatory and administrative powers to their own provincial offenses. State powers are similar, combining criminal and non-criminal measures.

3.4.1 Canada

Several agencies have administrative or regulatory powers which can be used against improper telemarketing activities.

The federal Competition Bureau is an agency within Industry Canada with both civil and criminal enforcement powers under the Competition Act. It is independent, reporting to the Director of Investigation and Research, who is appointed under the Act. The Bureau's Fair Business Practices Branch promotes a fair and competitive marketplace by preventing misleading advertising and other deceptive marketing practices. It administers the regulatory criminal law provisions of ss.52-60 of the Act, and conducts investigations using the powers provided. Investigating deceptive telemarketing practices is presently an enforcement priority. This now falls under s.52(1)(a) (false or misleading representations in promoting products, services or business interests). Amendments to deal specifically with telemarketing are now being proposed, as noted above. The Branch is also actively involved in cooperative cross-border enforcement and in education and prevention programs in this area.

Revenue Canada, the agency responsible for enforcing the Income Tax Act, the Excise Tax Act, the Customs Act and the Customs Tariff has units responsible for all of these areas. Generally they may inspect, compel disclosure of business tax, payroll or other records, freeze accounts or transactions, and in the case of Canada Customs, inspect international shipments and related documents. Offenses relating to obstruction, non-compliance with demands, non-payment, or providing false or misleading information could be prosecuted as federal criminal offenses by the Attorney General of Canada or dealt with by civil means. Information provided by taxpayers cannot be shared with other agencies except as expressly provided by law. However, Revenue Canada can, and does, cooperate with law enforcement agencies in both countries and the U.S. Internal Revenue Service where possible to control telemarketing fraud and other crime problems.

Provincial regulatory agencies. The primary jurisdiction over commercial activities ("property and civil rights") in Canada is with the provinces. All 10 provinces and both territories have consumer-protection legislation in some form, and most contain provisions similar to those of their U.S. counterparts. They place restrictions on various direct-marketing techniques, impose requirements for disclosure, bar misleading practices and in some cases, provide "cooling-off" periods before contracts become binding. Remedies include civil litigation (individual or class-actions), restitution, rescission of contracts, damages, and a series of offenses and penalties. In Canada, the trading in stocks, bonds and other securities is exclusively regulated by the provinces, which impose prospectus or disclosure requirements to prevent deception.

3.4.2 United States

The Federal Trade Commission (FTC), has general federal jurisdiction over consumer protection, including extensive civil and administrative powers to deal with fraud. Under the Federal Trade Commission Act, the FTC can prevent unfair or deceptive acts or practices, seek redress, regulate trade practices, investigate and file civil actions for violations of the Act, and make reports and recommendations to Congress. Historically, the FTC has brought most actions against fraudulent telemarketers under § 5 of the FTC Act, which deals with unfair or deceptive practices affecting commerce. § 13(b) provides for federal court injunctions, which may be used before or after violations occur to stop violations and protect victims by freezing assets and appointing receivers.

The Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. § 6101) also gives the FTC powers to regulate telemarketing and prohibit abuses. It also empowers the FTC and state Attorneys General to bring federal civil actions for regulatory violations. The 1995 Telemarketing Sales Rule (TSR), implementing the Act, requires telemarketers to identify themselves, accurately describe goods or services offered, and tell consumers that "prize promotions" cannot require any purchase or payment. Disclosure must be given before payment, and must include such things as accurate contest odds, refund policies and any other material restrictions, limitations, or conditions. The *TSR* also prohibits credit card laundering through unauthorized merchant accounts, accepting payment before some types of services are rendered, and abusive practices, including threats, profane language, repeated calls or harassment, calls to consumers who have asked not to be called, and calling before 8:00 a.m. or after 9:00 p.m.

Other FTC powers include: the *Franchise Rule* (disclosure about business opportunities to investors); the *Mail or Telephone Order Rule* (notice that goods will not arrive in a promised or prescribed time); the *Electronic Fund Transfer Act* (barring unauthorized bank debits by EFT); the *"900 Number" Rule* (regulating the pay-per-call industry), and the *Fair Debt Collection Practices Act* (prohibiting deceptive or abusive conduct).

Other federal agencies. The Commodity Futures Trading Commission and the Securities and Exchange Commission can investigate and conduct litigation against misleading telemarketing schemes involving commodities and securities, respectively. The Postal Inspection Service has similar powers for mail fraud and other abuses of the mails.

State Authority. All 50 states have the power to regulate general trade and commerce, and every state and the District of Columbia has statutes which apply to most consumer transactions, aimed at preventing deception and abuse in the marketplace. Many are patterned after the FTC Act's "unfair or deceptive practices" prohibitions, allowing widespread redress to protect consumers. 45 states also have specific legislation regulating telemarketing. Generally, these require telemarketers to register, post bonds, or make certain disclosures to prospective customers. Some also put restrictions on specific transactions, especially those involving gifts or prizes. As noted above, state Attorneys General also enforce the federal FTC Telemarketing Rule, and some states have adopted rules of their own.

3.5 OTHER SOURCES OF AUTHORITY

3.5.1 Investigative powers

Canada and the United States both have a range of powers and procedures for investigating telemarketing fraud. A technique used in both countries, electronic

surveillance, is of major importance because telephones are the primary instrument for offenders. The tapping, monitoring and recording of telephone conversations require some form of court order or permission as a safeguard of constitutional rights. In the United States, calls can be monitored under federal law without a court order if one of the parties consents. In Canada the situation is more limited. The monitoring of cross-border calls can raise other legal issues as well. The importance of electronic surveillance methods for investigating this offense is clear, and better information about how they can be used in the various jurisdictions would be useful in coordinating investigations. **The Working Group recommends that the legal and technical potential and limits of electronic surveillance as a tool against telemarketing fraud in both countries be explored further.**

3.5.2 Bail statutes

Bail statutes in both countries provide a means to suppress telemarketing operations where the participants are already facing criminal charges. They allow courts to impose conditions for release which could be used to bar offenders from using telephone services for telemarketing or prevent them from associating with other offenders. These conditions may also apply to release pending extradition. Breach of such conditions or the commission of further offenses while on bail can result in offenders being held in custody until they are tried or extradited.

3.5.3 Blocking or terminating telephone service.

The fact that telemarketing fraud requires the use of telephone services led the Working Group to consider ways in which known offenders could be deprived of those services. Services could be terminated completely, limited so as to make telemarketing activities impossible, or calls to or from specific numbers blocked. At present, neither country has specific statutory powers to do this. In the United States, only one federal statute, 18 U.S.C. § 1084(d), authorizes a common carrier to terminate service based on criminal use of the telephones. It requires that the carrier be given written notice by a law-enforcement agency that the service is being used or will likely be used to transmit gambling information. Customers must be given reasonable notice, and can challenge the disconnection in court. Both countries have provisions, such as the bail statutes discussed above, which may be used as the basis for court orders denying known offenders access to services for telemarketing under specific circumstances.

Common carriers and service providers in both countries can block or terminate service where customers are in breach of contract. Indeed, this is not uncommon where customers do not pay telephone bills or are caught defrauding the companies themselves. In Canada, regulations impose some conditions on service contracts, and it is possible that telecommunications regulators could take steps to ensure that contracts require customers to agree not to use the telephones for telemarketing fraud or to engage in specified deceptive business practices. Contracts could also make formal notification by law-enforcement or administrative officials that service was being used for deceptive practices, or the order of a court or tribunal, grounds for terminating service. This could be an important tool for controlling telemarketing fraud, since the offenses cannot be committed without telephone service.

Any expansion of powers to terminate telephone services would need to identify offenders and lines quickly and accurately. It would also have to allow whatever legal proceedings were needed to be finished quickly and expeditiously. It is important to ensure that only offenders are targeted, but that the system can react quickly to those who move or hide their identities to avoid disconnection. The two major alternatives discussed were:

- the use of orders from a court or tribunal directing telephone companies to disconnect those against whom a finding was made, or
- the use of contract terms (i.e., that the customer not use the telephone to commit offenses) to permit the provider to disconnect summarily, forcing the customer to initiate proceedings, if any, for breach of contract.

While law-abiding individuals have a right to telephone services, professional criminals who abuse the service for fraudulent activities should not. **The Working Group recommends that both governments examine the regulation of telephone services and consider options which would permit the denial of telephone services to telemarketing offenders.**

3.6 MUTUAL LEGAL ASSISTANCE

Law enforcement agencies informally share investigative information across the border within the legal limits of both countries, and much information can be handled in this way. The legal limits include the constitutional, privacy and security safeguards in place in both countries. The Mutual Legal Assistance Treaty (MLAT) between the United States and Canada and domestic legislation in both countries provide a framework for each country to obtain information for the other on formal request. MLAT requests, for example, form the basis for search warrants allowing the recipient to obtain the evidence requested.

Formal MLAT proceedings can consume valuable time and resources for those at both ends of the process. Offenders can sometimes delay proceedings or get information about the evidence being gathered against them by challenging MLAT requests. Some forms of assistance are not presently available under the MLAT and domestic legislation. **The Working Group recommends that the scope of the existing Canada-U.S. mutual legal assistance arrangements be considered to determine whether these might be expanded to deal more effectively with telemarketing-fraud cases.**

There appears to be uncertainty in the law-enforcement community about when MLAT requests are necessary and when they are not, which can result in using them when they are not needed. **The Working Group recommends that both governments clarify the circumstances under which formal mutual legal assistance requests are needed, by providing legal information and advice to the agencies involved.**

3.7 EXTRADITION

The Working Group views effective extradition provisions as a major element of the overall strategy against telemarketing fraud. Extraditing offenders for trial in the jurisdictions where most of the witnesses and victims live serves justice and is cost-effective, particularly given the long distances involved in many telemarketing frauds. The fact that victims in these cases are often elderly argues both for and against extradition: extraditing offenders limits travel for frail witnesses, but the delays which occur often mean that elderly witnesses die or become incapacitated before a criminal trial can be held. The Working Group is concerned that the costs and procedural delays for extradition are often so great that agencies reported abandonment of prosecutions or agreement to unfavourable pleas in extreme cases.

The Working Group noted two differences between the extradition procedures of Canada and

the United States. Extradition from Canada currently requires requesting states to provide the quality and quantity of evidence typically sought at a full trial: first-party witness affidavits establishing a prima facie case. This is a higher standard than that required by the United States and most European countries, which allow a single sworn summary of the prosecution's evidence. This situation is presently under review by the Government of Canada. The United States also normally holds those facing extradition proceedings in custody, whereas in Canada, they are subject to the same bail-release conditions as persons charged with Canadian criminal offenses. This is unlikely to change, but it was noted that bail can be denied or revoked if offenses are committed while on release, and that conditions intended to prevent this can be imposed. The Working Group also considered the concerns of some participants that the judgment of the Supreme Court of Canada in U.S.A. v. Cotroni might require the trial in Canada of telemarketers who are Canadian citizens. A review of the case suggests that it sets guidelines for reviewing the extradition of Canadian citizens who could be prosecuted in Canada, but does not create a general prohibition. **The Working Group recommends that the Canada-U.S. extradition arrangements be examined, and if possible modified, to facilitate and accelerate extradition in telemarketing fraud cases.**

3.8 DEPORTATION

Deportation cannot be used as a substitute for extradition, nor can either country deport one of its citizens. A key characteristic of telemarketing fraud is the mobility of offenders, however, which makes it possible that offenders in some cases may have moved from one country to another. In both Canada and the United States, persons can be deported because they have committed crimes, because they have misled immigration authorities about previous criminality, or simply because they are working without permission. This may be the case in some telemarketing situations, and if so, offenders could be deported. **The Working Group recommends that the provisions of the federal laws of both countries which might allow for the deportation of foreign nationals caught engaging in telemarketing fraud be reviewed, and that enforcement agencies be provided with information about the circumstances under which deportation may be an option in such cases.**

4. EDUCATION AND PREVENTION

The essence of fraud is that victims are deceived into acting to their own disadvantage. The deception makes it both possible and necessary to prevent the frauds from succeeding by giving potential victims information to protect themselves. To succeed, educational programs must have accurate information about who commits the offense, who is likely to be victimized by it, and how this occurs. **The Working Group recommends that structured and methodical research be conducted into offenders, victims and other aspects of telemarketing fraud, and that the results be used to create effective educational materials and strategies to prevent it.**

Education and prevention efforts are a critical element of any overall strategy to control telemarketing fraud. They can save large numbers of prospective victims the emotional and material consequences of losing irreplaceable funds or assets. They may also deter offenders by making telemarketing fraud unprofitable. There are several ways in which the United States and Canada can usefully collaborate to make prevention efforts more effective. Authorities can share information about victims, offenders and the offense itself, and about the messages and media used and their effectiveness. They can also work together on particular education projects, coordinating timing, media and messages to reach consumers in both countries more effectively than if either country acted alone. **The Working Group recommends that the governments and agencies of Canada and the United States cooperate as closely as possible in developing and maintaining educational materials and effective programs to disseminate them, and in coordinating their education and prevention efforts.**

Examination of these questions in a binational context involves four key questions.

- Whom should we seek to educate?
- Through what communications media can they best be reached?
- What messages should be delivered?
- How can our governments and agencies effectively cooperate?

4.1 EDUCATING THE GENERAL PUBLIC

Government agencies and non-governmental organizations in both countries already publish brochures, manuals, pamphlets, and other materials that contain valuable information about telemarketing fraud. These include messages intended to raise general awareness of the problem and to convey specific information about particular schemes and how they work. In most cases these efforts form part of general consumer-education or crime-prevention programs. They have the advantage of reaching very large numbers of people, but because telemarketing fraud is only a small part of more general consumer-protection and crime-prevention agendas, it only forms a small part of the overall message. This means that information cannot be detailed, and may be overlooked in the competition for attention with other, higher-profile elements of the package.

The Working Group noted one particularly disturbing fact about how the offense is perceived, by both the general public and by victims themselves. Some do not view it as a criminal offense at all, but as simple bad judgment on the part of victims. This perception can lead to a tendency to blame the victims for their own losses. It affects how society sees the victims, and how the victims see themselves. This in turn can influence the way the offense is treated by law-enforcement and regulatory

agencies, and when offenders are convicted, by the courts which sentence them. **The Working Group has already recommended that telemarketing fraud be labelled as a serious form of economic crime. It is important that this most fundamental fact be made a key part of the message directed at the general populations of Canada and the United States.**

4.2 EDUCATING SPECIFIC SEGMENTS OF THE PUBLIC

Focusing education on specific target groups allows resources to be used more effectively and more detailed messages to be communicated. It is the offenders, not governments, who choose the victims, and prevention requires that authorities determine who is most likely to be targeted

and reach out to them before the offenders do. This involves identifying target groups based on risk - the likelihood that offenders will contact them and the likelihood they will be victimized if contacted. Mature adults, including the elderly, who have worked for many years and have accumulated substantial funds, assets, or credit, are more attractive to offenders.

Choosing target groups. Target groups may be defined by whatever characteristics make them seem suitable to offenders, by research into which population groups are actually being targeted, or by specific information, such as "mooch" or "sucker lists" seized by police. As noted above, senior citizens are being disproportionately victimized, and they are already one focus of education efforts in both countries. Lists compiled by offenders themselves, where available, are used in the "reverse boiler-room" education efforts described below. It may sometimes be possible to target specific cities or regions with anti-fraud advertising if they are identified as being singled out by offenders. The identification of potential victim groups is important because it allows messages to be constructed and delivered with the maximum impact at the least cost. Once target groups are identified, appropriate messages must be developed and appropriate media chosen to deliver them in ways which will be received, understood, and remembered.

Choosing the media. The Working Group did not examine media in detail, but did note that such things as information brochures, pamphlets, newsletter pieces on telemarketing, inserts in pension checks, and radio, television or newspaper advertising have already been used effectively. Specific groups can often be reached through their own newsletters or organizations. Internet websites may also become an important medium, particularly if, as potential victims go "on line", offenders do so as well. Speakers from public and private organizations can talk about illegitimate telemarketing to affected groups, using presentation kits developed to assist them. Possibly the best medium for contacting victims directly is the one used by the offenders themselves, the telephone, a fact demonstrated by the success of "reverse boiler-room" operations (below).

Developing the message. The nature and content of the message will also vary depending on the nature of the target audience and other circumstances. Messages directed at specific groups must be framed in terms that those groups are likely to see and understand. Offenders have targeted victims based on factors such as age, disability, language, and culture. Each of these factors is a challenge to those who must find ways to communicate with potential victims more effectively than the telemarketers can. Messages must also be changed from time to time, to keep up to date with the latest developments in fraud, and to be interesting and relevant to the public.

4.3 TWO SUCCESS STORIES: CONSUMER "HOTLINES" AND "REVERSE BOILER-ROOMS"

- **"Hotlines" for Consumer Questions and Complaints.**

Government and non-government organizations in both countries have set up telephone lines for complaints about fraudulent telemarketing or general consumer matters. These exchange information both ways: victims can be given information about how to complain effectively and how to avoid being victimized again, and the operators gain valuable and timely information about ongoing frauds. Law-enforcement can use this for investigations or enforcement proceedings, and educators can use it to keep their materials and programs up-to-date. Since the information is voluntarily provided by members of the public, there appear to be few legal restrictions on how it can be used.

The Canadian "Phonebusters" unit, a joint project of the Ontario Provincial Police and federal agencies, and the U.S. National Fraud Information Center (NFIC) both run nation-wide, toll free hotlines, and the Federal Trade Commission (FTC) recently set up a Consumer Response Center. The U.S. agencies download the information they compile into the Telemarketing Complaint System (TCS), a data-base run by the FTC and the National Association of Attorneys General (NAAG). The FTC recently voted to share its complaint data with Canadian law enforcement agencies, and the Canadian data are now being transferred to the TCS. These steps will enhance the ability of agencies in both countries to monitor and act upon complaints quickly, no matter where they originate.

- **"Reverse Boiler Rooms"**

The more specifically targeted a message is, the more detailed and effective it can be. This is demonstrated by the success of "reverse boiler-room" projects which contact potential victims using the same means the offenders do: the telephone. Telemarketing "boiler rooms" use salespeople to telephone prospective victims, and law enforcement and consumer organizations have all employed the same principle in reverse: groups of volunteers make large numbers of calls to those whose names appear on "mooch lists" or "sucker lists" seized from offenders. Calls may warn about the general problem, or about particular telemarketing frauds known to be in operation, and one-on-one contact allows callers to answer questions or give information needed by the individual recipient. Groups conducting reverse boiler rooms in the United States report that persons called appreciate the effort and the information they receive. The Working Group encourages its agency participants to assist in the development and conduct of future reverse boiler rooms in both countries.

5.0 CANADA-UNITED STATES COOPERATION AND STRATEGY

The nature of telemarketing fraud makes cooperation between agencies and governments particularly important. The ease with which offenders can defraud victims in other jurisdictions and their ability to change their tactics or targets require governments to be flexible and coordinated in responding. The foregoing sections have identified a variety of powers, programs, and techniques available for use against telemarketing fraud. Developments in both countries have already demonstrated the benefits of regional and inter-agency cooperation and coordinated strategies at the regional and national levels. The cross-border aspect of the crime simply extends the same principle to the international level. Our shared goal should be to establish that the Canada-U.S. border will not be allowed to become an obstacle to controlling telemarketing fraud. **The Working Group recommends that strategies directed at the control of telemarketing fraud be coordinated between the United States and Canada at the agency, regional and national levels.**

5.1 Basic Strategic Goals

The ultimate objective is to reduce the harm that telemarketing fraud causes to victims and society. The various measures identified in this Report offer different ways of achieving this, which will be most effective if used in accordance with defined strategic goals. The Working Group identified the following goals on which specific strategies can be based.

Agencies should react quickly to offenses. The longer it takes to establish that a fraud operation is active, the more people are victimized and the higher investigation and prosecution costs will be. The dispersal of offenders, victims and agencies makes this worse by delaying effective actions. This requires agencies to gather information quickly, assess what is relevant, and transmit it quickly to other agencies and jurisdictions. It is important to establish which agencies are in the best position to take action and to provide them with the information they need to do so as quickly as possible.

Strategies should combine prevention, enforcement and punishment. All three of these elements are equally important in controlling this problem. Justice requires that telemarketing fraud be denounced as a crime and offenders punished accordingly. It is also important that regulatory and enforcement powers be used quickly and effectively against ongoing frauds to limit the damage and bring offenders to justice. The third element, prevention, is important because reaching victims before the offenders do prevents harm from occurring in the first place and deters offenders by making the crime unprofitable.

Strategies should be as cost-effective as possible. Telemarketing fraud is more expensive to investigate and prosecute than many other crimes, but cost-effective methods can be found. Tested investigative methods can be adapted and if needed, new ones can be developed. Devising efficient strategies and coordinating them to avoid duplication of effort will ensure that the best possible results are achieved with available resources. The ability to prevent frauds or to react quickly when they occur may reduce the numbers of victims and losses and the costs of investigation and prosecution.

Victims are important. Considering victims' interests is important with this offense because of the

large numbers of people victimized. Strategies should deal directly with victim interests by preventing or reducing their losses and by recovering proceeds for restitution where possible. It is also important that victims are kept informed about proceedings and that their evidence about victim-impact is heard by the courts. Given the age of many victims and the impact the offense often has on their lives, victim support programs are also important to minimize long-term impact and prevent further victimization.

Strategies should be flexible. Telemarketing frauds evolve as the technology changes and offenders find new ways to take advantage of it. The ability of offenders to move and change their operations quickly requires that both enforcement and prevention programs be flexible enough to react as quickly as the offenders can.

Strategies should include an ongoing, long-term commitment by agencies. Telemarketing fraud requires expertise on the part of enforcement and regulatory agencies. Those involved must have a knowledge of the offense, of offenders and their methods, and of the agencies and powers available to respond. Expertise takes time to develop, which requires the commitment of personnel and funding to specialized units in law-enforcement and regulatory agencies. This expertise permits faster and more effective reactions, which also reduces costs.

5.2 Operational Approaches

In practice, these elements can be combined in different ways to approach the problem. The most effective approach in each case will depend on the nature and scope of the fraud scheme involved and the resources deployed against it. The Working Group considered several general options, but recognizes that specific recommendations cannot be made in the abstract. Agencies must be free to choose and combine approaches as the circumstances warrant. The following options are general descriptions only and are not mutually exclusive. A truly effective strategy will be flexible enough to select and apply whichever approaches are best suited to a particular problem.

Larger-scale investigations and prosecutions. Larger investigations involving many investigators, agencies, jurisdictions and technical resources are often demanded by the geographical scope of telemarketing-fraud schemes, and justified by the large numbers of victims and substantial proceeds generated. This approach may also offer evidentiary advantages if large numbers of individual fraud transactions are combined into a single large case for trial. It may also generate longer sentences, as the courts can be shown the true extent of the operation and the amount of the proceeds. In this model, coordination is important to ensure all jurisdictions and agencies act together on combined operations, working on the same schedule towards the same ultimate goal. Charges tend to focus on traditional criminal frauds, invoking long sentences and full criminal-law powers and procedures.

Smaller-scale investigations and prosecutions. The use of larger numbers of smaller, less-expensive proceedings is less likely to generate the substantial sentences or result in the conviction of entire fraud organizations, but offers other advantages. Smaller investigations can be concluded more quickly, allowing authorities to move more quickly against ongoing frauds. They also may require fewer investigators and technical resources, allowing more operations to be conducted with available resources, and tend to be more flexible, allowing authorities to react more quickly when offenders move or change tactics. In this model, coordinating separate investigations against the same offenders is particularly important. Agencies need to pass on information to give others the basis to take quick action, and when offenders move, to alert other jurisdictions.

The disruption of offenders' operations. Telemarketing fraud is a complex offense which requires numerous conditions to work effectively. A number of enforcement and regulatory options could be used to make the offense more difficult, and less profitable, to commit. Some of these involve the technology used to commit the offense: offenders might be deprived of the telephone services needed for telemarketing, or of their anonymity in using it, for example. Others involve civil and administrative actions which target proceeds, taking away the basic profit motive and depriving offenders of the resources needed for litigation and starting new fraud schemes. What they have in common is that they increase offender costs and risks and decrease potential proceeds, thereby making the offense easier to control and less attractive to offenders.

Prevention. The most cost-effective means to control any crime is to prevent it, since this avoids the costs both to victims and society. Prevention is never completely effective, which makes enforcement and punishment necessary, but educating potential victims has considerable potential in preventing telemarketing fraud. If used effectively, it also has the potential to deter offenders by making the offense less profitable and more risky.

5.3 ELEMENTS OF A BINATIONAL STRATEGY

Strategies to deal with cross-border telemarketing fraud will incorporate the same elements and approaches set out above, but with the added need for the United States and Canada to coordinate activities and where possible to act jointly for mutual benefit. With this in mind, the Working Group identified the following areas in which greater coordination or closer cooperation will assist in the effort.

National cooperation and the Working Group. Much of the practical cooperation should be left to the specific agencies which deal with actual cases (below), but there is also a need for the coordination of general policy matters at the national level, and some key subjects, notably foreign policy, extradition, and MLAT matters, must be dealt with federally in both countries. The Working Group represents the first effort of Canada and the United States to develop a joint binational approach to telemarketing fraud by examining each country's experiences with it. It has provided an excellent opportunity for substantive discussions, exchanges of information and ideas, and the establishment of institutional relationships at all levels of government. Further meetings would ensure that matters of cross-border enforcement are dealt with as they arise, and serve as a meeting-point from which to coordinate the activities of the various regional groups. **The Working Group recommends that an ongoing binational working group serve as an overall coordinator and deal with national and binational telemarketing fraud issues as they arise.**

Regional and agency cooperation. Both countries have regional task forces of law enforcement and regulatory agencies to deal with telemarketing fraud. Their successes in convicting some offenders and driving others out of telemarketing suggest that cross-border cooperation may bring similar benefits. Many regulatory and law-enforcement efforts are focused at the regional level, and it is here that cross-border cooperation between states, provinces and federal authorities is likely to have a direct impact on specific offenders and their operations. Personal contact between investigators familiar with ongoing operations in their regions is also important to ensure that vital information is transferred quickly and reaches those who are in a position to use it effectively. Regional task forces have already begun cooperating across the international border, and their efforts are beginning to show results. **The Working Group recognizes the usefulness of regional task-forces on telemarketing fraud. It recommends that they be encouraged to cooperate across the international border to the maximum extent possible.**

Prosecutorial cooperation. Prosecutors from the federal, state and provincial levels participated in the Working Group and have been active in its regional counterparts. Formal and informal cooperation in developing and prosecuting cases underlies many of the specific issues raised relating to the transfer of information, evidence, witnesses, and ultimately fugitive offenders, from one jurisdiction to another. Close cooperation also raises resource issues, which in turn raise institutional and sovereignty concerns where the agencies involved are in different countries. The Working Group noted one way in which costs might be shared, however. Ordinarily, the burden of contacting and transporting witnesses falls on the agency seeking their testimony. In telemarketing fraud cases, once those involved have determined who is in the best position to prosecute offenders, it may be appropriate for agencies in other jurisdictions where victims or other witnesses reside to arrange their travel if their evidence is needed and cannot be given by other means.

Information-sharing. Passing accurate and secure information between agencies avoids duplication of effort and allows them to react more quickly against ongoing fraud schemes. This involves gathering reliable information from consumer complaints, police, regulators and other sources, and ensuring that it reaches the agencies best placed to take action as quickly as possible. The Working Group is aware that there may be some legal restrictions on what information can be shared and with whom, but there appears to be much that can be done within legal limits. It supports the information-transfer between Phonebusters, the NAAG, the NFIC and the FTC as an effort which should significantly assist authorities in both countries.

Both Canada and the United States are exploring further means of storing and accessing consumer complaint data, working towards shared-access databases on which their agencies can quickly and securely post, exchange and retrieve relevant information. In Canada, provincial consumer ministries and Industry Canada are developing *Canshare*, which would compile consumer-protection information on a single national database accessible to Canadian agencies. There are numerous federal and provincial privacy requirements which would have to be examined in detail before this information could be routinely accessible to U.S. agencies. In the United States the FTC and NAAG are developing the *Consumer Sentinel Binational Telemarketing Network*, which would be open to Canadian agencies, subject to confidentiality agreements. While there are legal limits on cross-border information-sharing, the advantages of some form of joint-access system would be substantial.

The Working Group recognizes the usefulness of shared-access information systems as a means of passing information quickly and securely between agencies. It recommends that, to further coordination, governments and agencies examine privacy and other laws relevant to cross-border shared access information systems with a view to expanding access to such systems to the maximum extent possible.

Resources. The distances involved and the dispersal of victims make telemarketing frauds, especially large ones, more expensive to investigate than most other white-collar crimes. The sophistication of the offenders requires a stable and expert law-enforcement and regulatory response, which in turn demands an ongoing, stable resource commitment within agencies. Resources are also needed to support regional and international efforts in dealing with specific cases and more generally, in developing information-sharing, education and prevention efforts. While each country must determine for itself what combination of resources and participating agencies will be most effective in its national strategy, the Working Group recognizes that a commitment of resources dedicated to telemarketing fraud will be needed to mount an effective response to the problem.

6. CONCLUSION

Telemarketing fraud has become a serious and expanding problem on both sides of the Canada-U.S. border. Cross-border fraud poses a significant challenge for both governments. It is an international problem, requiring the joint and coordinated efforts of both countries to control. No single government, organization or agency in either country, working alone, can solve it. An effective campaign will require cooperation in developing strategies and options and in putting them into effect. It should use all available expertise and resources from federal, state, provincial and local governments and their agencies and from the private sector. With a sound combination of strategies and tactics, the United States and Canada can meet the challenge and have a meaningful, even decisive, impact on this most pernicious of white-collar crimes.

An important message from the Postmaster General

Know Fraud
PO BOX 45600
Washington, DC 20026-5600

United States Postal Service

WARNING...

Don't be his next victim.

Use these tips to protect yourself if he calls!

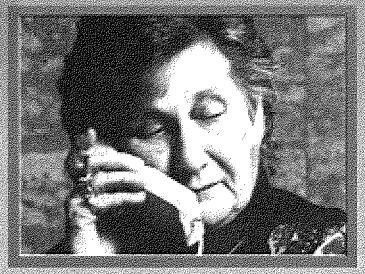
KNOW FRAUD™

PRSRT STD
Postage & Fees Paid
U.S.P.S.
Permit No. G-10

POSTAL CUSTOMER

Senate Permanent Subcommittee
On Investigations
EXHIBIT # 9

Fraudulent Telemarketers:



They've got your number... now they want your money!

Keep this card near your phone—know the difference between legitimate phone offers and fraudulent ones.

Versión en español disponible en la biblioteca de su localidad.

Beware! If an unknown caller:

- Says you've won a prize but asks you to send money first.
- Says you have to act right away.
- Instructs you to wire money.
- Offers to have someone pick up a payment from your home.
- Says he or she is a law enforcement officer who will help you—for a fee.

Follow these guidelines to protect yourself:

- Check all unsolicited offers with your Better Business Bureau.
- Don't assume a friendly voice belongs to a friend.
- Never give your credit card, checking account or social security number to an unknown caller.

Say NO to telemarketing fraud!

Visit our Web site at:
www.consumer.gov/knowfraud

Check out from your library:
The Know Fraud video

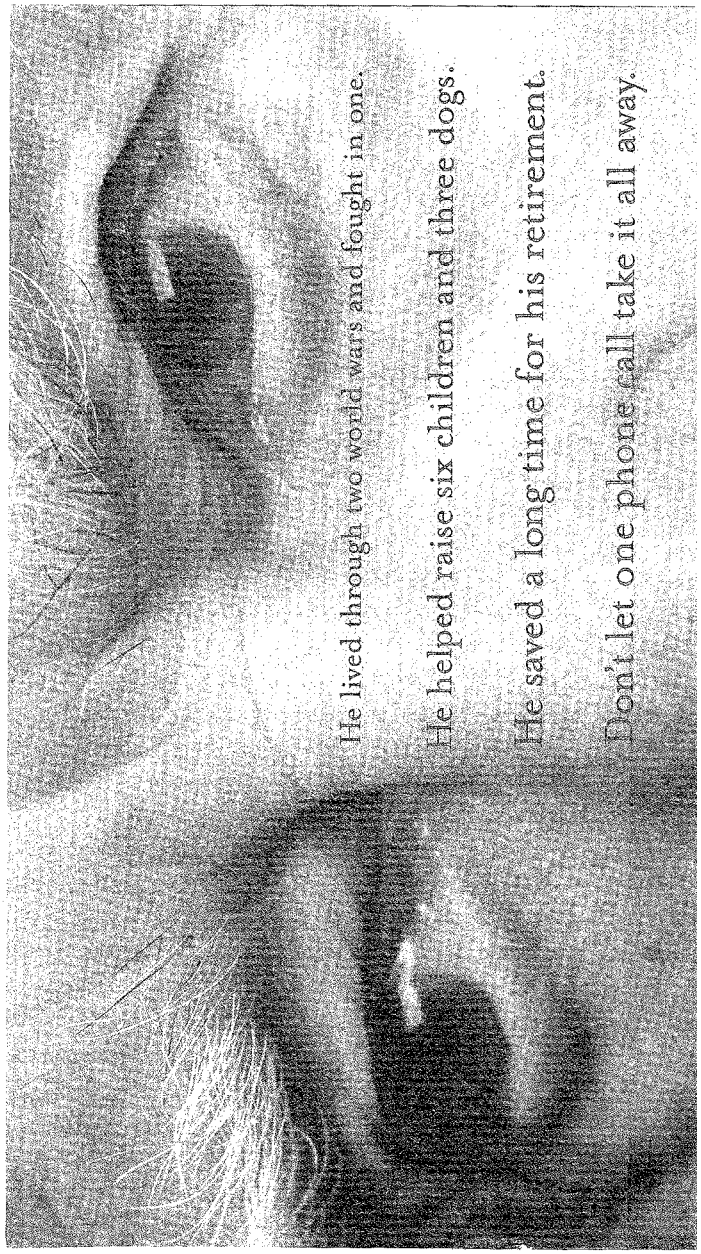
Write to us at:
Know Fraud
P.O. Box 45600
Washington, DC 20026-5600

If you think you're a victim of fraud, call toll free:
1-877-987-3728
Telephone support provided by AT&T, which encourages you to protect yourself.

This is a consumer message from:

- AARP
- Council of Better Business Bureaus' Foundation
- Department of Justice
- Federal Bureau of Investigation
- Federal Trade Commission
- National Association of Attorneys General
- Securities and Exchange Commission
- U.S. Postal Inspection Service

Senate Permanent Subcommittee
On Investigations
EXHIBIT #____10____



"He had such a nice voice. He asked me how I was. How my family was. If I had any pets. Before I knew it, he had convinced me to mail off half my life savings. He told me I was buying important insurance that would protect my family. I wish that I had never picked up the phone."

the Senior Action Coalition

This happens every day.

Every year, more than 40 billion dollars are lost through telemarketing fraud, and the majority of these victims fall into one defining category — most are senior citizens. Yet, only two percent think telemarketing fraud is a crime. Most seniors find it hard to tell the difference between legitimate telemarketing calls and telemarketing scams.

Why do so many senior citizens fall prey to telemarketing scams?

In Allegheny County, most seniors who become victims are conservative investors who use their investment income to expand their social security living stipend. Many are afraid they will outlive their source of income and will take any measure to stretch whatever savings they have left. Ironically, it is this conservatism that many criminals take advantage of.

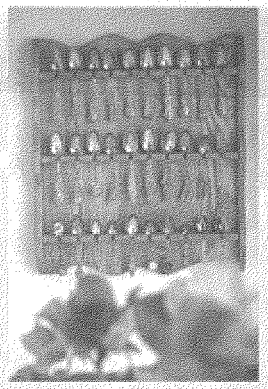
"Last September, a man called a
assured me my wife and I would
paid a small cost to register the
be paid off. I was reluctant, but
the last four digits of my Socl
realize I was giving him everyth
charge on my card from a merch
afraid to ask. I was so embarrass

"Last September, a man called and told me I had won as much as $300,000. He had a very pleasant voice and assured me my wife and I would begin receiving monthly payments of between $5,000 and $12,000 as soon as I paid a small cost to register the bonds in my name. He also told me that my existing credit card balance would be paid off. I was reluctant, but I didn't want this opportunity to pass me by. So I agreed to give him my age, the last four digits of my Social Security number and the number on the back of my credit card. I didn't realize I was giving him everything he needed to access my account. A few days later, I discovered a $3,000 charge on my card from a merchant in Canada. I felt foolish and frustrated. I didn't know what to do and was afraid to ask. I was so embarrassed and ashamed. I didn't want anyone to think I couldn't take care of myself."

Most con artists claim their offers and investments carry no risk. And, since most seniors were raised in an era where people trusted each other and telephone fraud was unheard of, these claims are often taken to heart. As the most polite generation in America, the elderly often have difficulty saying

"no," especially over the phone. A favorite tactic of con artists is to develop a false bond of friendship with the person on the other end, often preying on fears and using courtesy as a tool to get into the wallets of victims.

This combination of life expectancy, investment naiveté and fear of outliving their source of income makes many senior citizens especially vulnerable to financial fraud, and has helped to create an epidemic of astounding proportions.



the Senior Action Coalition

Protect, Inform, Empower.

The Senior Action Coalition is working to protect against financial fraud. By informing area seniors and their families about how to identify and act against scams, and by creating a local clearinghouse where seniors can go to comfortably ask questions and report criminal fraud, the Coalition will empower this older generation. It will create the tools seniors need to safeguard their assets and protect others in the community.

Take the time to reach our seniors.
Or someone else will.

the Senior Action Coalition

U.S. Postal Inspection Service
1001 California Avenue
Pittsburgh, PA 15290
(412) 359-7900
(800) 846-4677
fax: (412) 359-7682

A Missouri man bought a vending machine route and 10 vending machines from a company that claimed he could meet or exceed his current annual salary. Before long, the promise of a profitable business had been broken, and the man, unable to meet his loan payments and support himself, filed for bankruptcy.

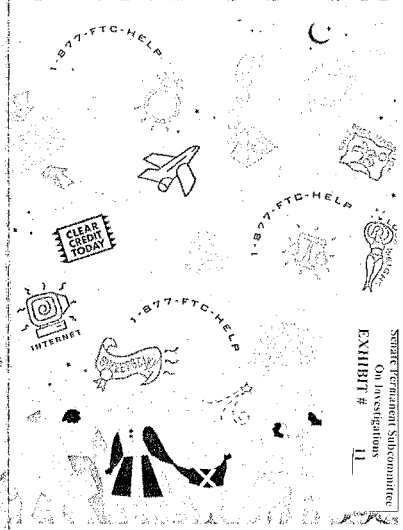
An Oregon family paid $179 for a "guaranteed" scholarship of at least $1,000 to help pay their son's college tuition bill. Instead, they received a list of 27 scholarship programs for which they could apply, some with deadlines long past. The same list was available in his high school library for free.

A Texas homemaker paid a travel company in advance for a family vacation package. After using a credit card to charge the $422 trip, she learned about additional charges and a change in accommodations. When she tried to cancel the trip because of the misrepresentations, the company refused to refund her money.

Contact the FTC for free information on 150 different consumer issues, including: advertising claims • buying, leasing and renting cars • credit • debt collection • exercise equipment • franchises • funeral services • investment schemes • lending services • online shopping • privacy • scholarship scams • sweepstakes • telemarketing • work-at-home schemes • and more.

Call toll-free: 1.877.FTC.HELP
TDD: 202.326.2502
Visit us online: www.ftc.gov
Write: Consumer Response Center
Federal Trade Commission
Washington, D.C. 20580-0001

FEDERAL TRADE COMMISSION



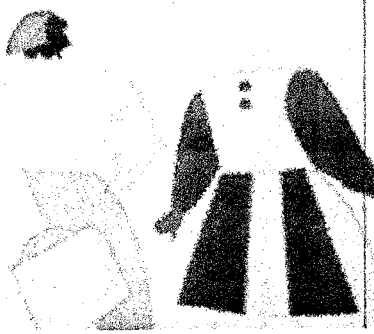
1-877-FTC-HELP

Senate Permanent Subcommittee On Investigations
EXHIBIT # 11

A Georgia couple paid $495 to a real estate company that claimed they had a buyer for a vacant lot the couple wanted to sell. The company never produced any potential buyers and wouldn't refund the couple's money.

An Oklahoma retiree received a letter guaranteeing a "free prize" in return for a small check to cover processing, shipping, handling and promotional costs. He sent the check, which was cashed promptly. He never received his prize.

A Vermont woman who lives on Social Security responded to a postcard from a "refund center" that claimed it had a $5,000 tax refund check payable to her in exchange for a processing fee of $11.97. She paid, but never saw the refund check or the fee.



THE FEDERAL TRADE COMMISSION

Can you recognize a rip-off? Smell a scam? Find a fraud? It's often hard to do. Many fraudulent promoters are experts at exploiting consumers' financial needs, naivete, and optimism, not to mention their fantasies of hitting the jackpot.

If you think you've been taken in by a deceptive sweepstakes offer, credit scheme, a telemarketing or Internet fraud, or a business opportunity that promised more than it could deliver, check it out with the Federal Trade Commission.

The FTC works *For the Consumer*—providing the information you need to identify and avoid fraud and deception in the marketplace. Although the FTC cannot resolve individual disputes, the information you provide is crucial to the enforcement of consumer protection laws. For more information about how to resolve individual disputes, check your local telephone directory for your state and local consumer protection authorities or write for *Solving Consumer Problems*, a helpful guide from the FTC.

To file a complaint about a fraudulent business practice or to get free information on how to spot, stop and avoid one, call the FTC, toll-free, at 1.877.FTC.HELP or visit www.ftc.gov. Click on Consumer Protection.

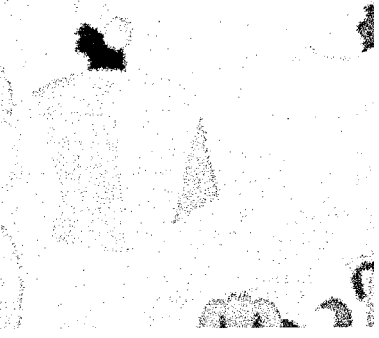
• WORKING FOR THE CONSUMER

The Federal Trade Commission is the nation's consumer protection champion. The FTC works For The Consumer to prevent fraud, deception and unfair business practices in the marketplace.

The FTC **enforces federal consumer protection laws.**

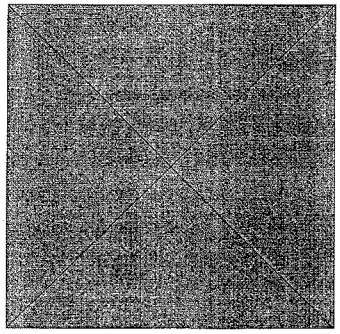
The FTC **provides free information to help you spot and avoid fraud and deception in the marketplace.**

The FTC **wants to hear from you, whether you want information or you want to file a complaint.**



Senate Permanent Subcommittee
On Investigations
EXHIBIT #12

Testimony
of
Michigan Attorney General
Jennifer M. Granholm
on
Cross-Border Fraud



Submitted to the
Senate Permanent Subcommittee on Investigations

Chairperson
Carl Levin

June 13, 2001

Thank you Chairman Levin and Members of the Permanent Subcommittee on Investigations for the opportunity to comment on the issue of cross-border fraud and its effect on the citizens of Michigan.

Years ago, telemarketing and sweepstakes fraud became the faceless crime of the 20th century, ultimately stealing billions of dollars from trusting individuals that had worked hard for their lifes' earnings. Small rooms filled with banks of telephones where professional con artists plied their trade, otherwise known as "boiler rooms," cropped up nationwide. Consumers received calls congratulating them on their good fortune of winning a grand sweepstakes or lottery and asking only for payment of the "bond," "taxes," "duties," or "legal fees" that would enable the delivery of the prize. Instead, what the consumer received was disappointment and despair. In the hope of winning large sums of money, consumers, many of modest means, sent their savings through wire, bank transfer, or the mail before realizing they had been victimized by heartless fraud.

Thanks to the combined efforts of state and federal agencies including the FBI, Federal Trade Commission, and the cooperative work of the states through the National Association of Attorneys General and other multi-state task forces, enforcement initiatives were successful in creating an inhospitable environment for would-be con artists in the telemarketing and sweepstakes arena.

Unfortunately, these individuals soon learned they could dodge the powers of the states by operating from other countries. Between January 1, 1996 and May 31, 2001, the Michigan Department of Attorney General received 996 complaints against

companies located in countries outside of the United States, including Canada, Australia, France, Bahamas, Germany, Mexico, The Netherlands, Switzerland, England, West Indies, Virgin Islands, Italy, Romania, and Nigeria.

A majority of these complaints continue to center around sweepstakes and telemarketing fraud, particularly involving companies from Canada. The caller is now able to "justify" the need for the consumer to send money to redeem their prize blaming it on cross-border taxes. After repeated hits on the same consumers, con artists have been known to change tactics and will initiate calls to consumers feigning to be a "recovery room" – a service that helps the victim "recover" his or her losses. Obviously having all the consumer's transaction details available, the consumer is convinced that, for a fee, the recovery room will work on their behalf to recoup their losses. The consumer is victimized yet again. Victims become embarrassed at their misguided faith in human decency and are reticent to contact authorities. By the time authorities are contacted, the con artist is often gone, and so is the money.

Ms. Julia Erb from Kimball, Michigan, who will testify before your committee, was defrauded by con artists based in Canada, Australia, and Spain who utilized elaborate ruses to steal her money. Although we are attempting to identify the perpetrators, existing enforcement mechanisms are inadequate to meaningfully address international fraud – especially fraud that can now be facilitated by the Internet.

In Michigan, as in many other states, resources are limited. My Consumer Protection Division pursues each and every complaint received in an attempt to obtain refunds for our complainants; but the truth of the matter remains that if we are not dealing with a legitimate company, we are not in a position to launch an international investigation and prosecution.

While the scam is easily performed, requiring only a telephone (or a web page) and a place to have money delivered, investigation and prosecution can be exceedingly

difficult as perpetrators often operate under numerous different names with drop box addresses; physical addresses are often not even known; consumer testimony regarding representations made on the telephone is not always reliable; and to top it off...the con artist operates from a foreign country.

As with the earlier national efforts to combat fraud within the United States, my office has also combined forces with international groups to join in this fight. I would like to recognize Phonebusters, Industry Canada, and Project Emptor, which were formed in 1998 to create and implement a systematic, cooperative, international approach to fraudulent lottery phone sales. This project was spearheaded by representatives from the states and the federal government in addition to the Royal Canadian Mounted Police and the Attorney General for British Columbia.

In addition, my office is fostering consumer education efforts in an attempt to educate our consumers **before** the opportunity to become defrauded presents itself. We have participated annually in Project Mailbox, a nationwide compiling of suits and initiatives brought forth by the states against sweepstakes and other categories of fraud, resulting in a report that captures national attention. We have implemented a statewide curriculum to educate consumers, and particularly senior citizens, on the warning signs of offers that may not be legitimate; and we support other state and federal educational initiatives such as Project Know Fraud, a multi-agency campaign initiated in November 1999 headed by the U.S. Postal Inspection Service, designed to educate consumers about telemarketing and direct mail fraud.

Despite these involvements, I am sorry to say the fraudulent cross-border activities involving consumers of my state continue to flourish. If our laws and our law enforcement efforts fail to keep pace with increasingly sophisticated, fraudulent schemes that are now only a keystroke away in the Internet age, we will not be able to protect our citizens. We must rise to the challenge of international consumer fraud, and the federal government must lead the way. Here are several suggestions:

- Congress should provide greater support to the Office of International Affairs so it may provide more assistance to state and federal law enforcement agencies in locating con artists and gathering evidence.

- We are able to identify and shut down fraudulent web sites even when such sites appear to originate from other countries because the domain servers are usually located within the United States. Our success is currently attributable to the *voluntary* cooperation of the companies registering domain names. Congress should examine the appropriateness of facilitating law enforcement efforts in this area through legislation.

- Effective responses to cross-border fraud require extraordinary cooperation between disparate law enforcement agencies. Protocols and procedures directed at facilitating cooperation between law enforcement agencies on such issues as service of process, evidence collection, and resource identification are imperative.

- Computer criminals are becoming more technologically sophisticated every day. Law enforcement agencies at all levels need additional resources to keep their technology up to date and to be able to hire additional well-trained staff to track and identify fraudulent enterprises.

Again I thank this subcommittee for this opportunity to speak on behalf of the State of Michigan, and I fully support appropriate legislation providing the states with additional tools to protect our citizens and combat consumer fraud.

Senate Permanent Subcommittee
On Investigations
EXHIBIT #_____13_____

Statement for the Record
Of

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TELEMARKETING FRAUD

Telemarketing Fraud

I wish to thank the Senators for the opportunity to provide written testimony on a matter that concerns so many.

Crooked telemarketers steal not just money but the self-esteem, trusting nature, quality of life, and even the health of many victims each year. There are a number of common misconceptions that police officers, family members, and the public have toward telemarketing and the victims of telemarketing fraud, not the least of which, is that the victim must be stupid or greedy to fall for a telemarketing scam. The fact is telemarketers oftentimes prey on, even specifically target, the most vulnerable segments of our population. It isn't just the seemingly vulnerable that fall victim though, doctors, lawyers, and the highly educated are just as likely to be taken depending on the sophistication of the scam used.

Telemarketing fraud is a "cross over crime." More often than not crooked telemarketers are now, or have been, involved in other crimes including racketeering, illegal drug distribution and use, robbery, identity theft, securities violations, and worse. And, we've learned that sometimes criminals use the proceeds of telemarketing fraud to support other criminal endeavors. This Office is presently investigating two telemarketing operations that are connected to organized crime and international money laundering. Many of our other cases involve cross-border telemarketers targeting US citizens.

To be able to effectively address the problem of telemarketing fraud, it is necessary to understand what telemarketing fraud is, including common telemarketing terminology; the types of scams used, seniors and victim demographics, investigation methods, and cross border law enforcement concerns.

Understanding Telemarketing Fraud

The Subcommittee members should understand that telemarketing, though not often liked, is a legal way for charities to collect funds, merchants to sell their products, and pollsters to conduct opinion surveys. Telemarketing *fraud* is illegal. Telemarketing fraud is the use of a telephone scheme combined with misrepresentations to steal something of value. Usually the theft involves money. However, an emerging trend is the use of information obtained through pretext calls to facilitate identity theft crimes. It does not matter if the initial call was made from the telemarketer to the victim or the victim made the first call as a result of receiving a piece of mail or seeing an advertisement. If the telephone solicitation is deceptive, it is telemarketing fraud. Fraudulent solicitations and offers made via the Internet are a closely related cousin of telemarketing fraud.

Terminology

Individuals that learned the telemarketing business from legal telemarketing rooms started many of the fraudulent telemarketing "boiler rooms." The terminology used between the two is mostly universal. Though, certain derogatory terms such as "mooch" and "dupes" probably developed from the criminal side of telemarketing. Some of the more frequently used terms are discussed in the following list.

Automated Clearinghouse Debit (ACH) - A method of payment whereby the telemarketer is able to receive funds directly from the customer's checking or savings account via electronic transfer. This eliminates the actual drafting of a check as well as the float period for the instrument to clear.

Fulfillment - the actual shipping of the product being offered by the telemarketer. For a boiler room to ship its product to the customer in a timely fashion, it must be able to "fulfill the back end" of the sale.

Boiler room - a telemarketing phone room. The term is used to describe the physical and emotional atmosphere of a typical phone room. Most phone rooms are sparsely furnished with groups of desks and telephones and are characterized by a high-pitched level of excitement generated by the sales reps.

Charge back - a customer's cancellation when the original purchase was made utilizing a credit card or an ACH debit. The customer subsequently receives a refund on his/her credit card and the telemarketer's merchant account is charged with an offsetting charge back for the amount of the sale. Some telemarketers use in-house collections departments on charge backs.

Charity room - Telefunding where a small portion of the funds raised - usually less than 10% - goes to charity.

Closer - a telemarketing sales rep who specializes in finalizing or "closing" the sale to a customer. "Closers" are usually experienced telemarketers who takeover the sale from the "fronter" and generally command a higher commission per sale. A closer may also be known as a "capper".

Cold calling – Unsolicited outgoing telephone calls to potential customers. Potential customers' names and telephone numbers are usually purchased by boiler room operators in the form of "lead lists." Or, the telemarketing operation will simply call all of the numbers in a phone book.

Dialers - new, lower-level employees, most without prior telemarketing experience, who make the first, unsolicited "cold" calls to targeted consumers. Once answered the telephone is handed off to an experienced telemarketer.

Dropping mail - the process of mailing large volumes of promotional materials (award notification letters or cards) designed to entice potential customers to call in to the boiler room. This practice is used as part of an "inbound" system sometimes known as reverse telemarketing, because the victim will make the initial call to the telemarketers. Mail is usually "dropped" several times per week by the telemarketer. Canadian telemarketers that use this system drop mail from US post offices giving a US address and postmark to the mail.

Dupes - Persons recognized by the telemarketing industry as being the easiest to persuade to part with their money, based on a number of factors, including age and prior entries into sweepstakes and contests.

Fronter – A "fronter" (or opener) is generally, an inexperienced sales rep who handles the first portion of a customer sale. The "fronter" will obtain basic customer background information and provide the customer with an outline of the promotion before turning the telephone over to a "closer" to finalize the deal.

Gimme gift – is the award or bonus that some customers receive. Even though sales reps advise customers that they may receive one of several valuable prizes, every customer actually receives the same "gimme" gift, usually a prize of very low value. Typical "gimme" gifts include a travel certificate or a piece of cheap jewelry.

Hard gift - An extra or throw-in gift given in addition to the "gimme gift" in order to entice the customer to make a purchase. Like the "gimme gift," it usually has a very low cost, although it is represented to be quite valuable. Typical "hard gifts" include a diamond pendant, designer watch, or small gold coin.

Inbound – Telemarketing boiler rooms that receive incoming customer calls by soliciting customers through the use of mailers, newspaper or television advertising, Internet, or automatic dialing systems.

Laydown – A laydown is a "pushover." A customer who is so excited about the promotion or award that he or she becomes an easy target for the sales rep.

Lead broker – a person or business that sells the name, age, telephone number, and other demographic data of potential customers to telemarketers.

Lead list - list of potential customers that a telemarketer may purchase from a lead broker. This list of names and telephone numbers represents potential customers who are most likely to be interested in the promotion. Leads are purchased targeting individuals or groups based on past buying tendencies, contest entries, age, income bracket, poor credit, demonstrated interests or even old or antique sounding names. Strong leads are often purchased for $3.00 to $5.00 per name. Sometimes leads are generated by the telemarketing operation through the use of advertising, cold calling, and direct mailers.

Lottery scheme - Victims are told they are entered into a foolproof method to win state or foreign lotteries. Sales of foreign lotteries are inherently illegal. The scheme generally purchases few, if any, lottery tickets and overhead and commission costs take a large portion of the funds. Lottery schemes are a favorite of Canadian based telemarketing operations.

Mail drop – Is a commercial mail-receiving agency in which individuals or businesses lease post office style boxes in order to receive mail and other deliveries. Mail drops are used by telemarketers for anonymity and to forward mail from US addresses to out-of-country telemarketing operations.

Mailer - The actual letter, card, or award notification that the telemarketer mails to potential customers in order to entice them to call in for more information. Mail is "dropped" by most boiler rooms that utilize an "inbound" system.

Misreps - Untrue or exaggerated statements made by a sales rep to entice a potential customer to buy (misrepresentations). Misreps may include false statements concerning award, bonus or product values, product or award quality, facts concerning the telemarketing company, odds of winning a specific award, etc.

Mooch - a sucker. A highly derogatory term used by telemarketers to describe a naive customer who is easily influenced and manipulated by the sales rep.

Mooch list – Also known as a "reload list." A list of customers who have previously made purchases in one or more telemarketing promotions. These highly valuable lists are kept by telemarketers until seemingly exhausted. Then they trade or sell them to other boiler rooms, starting the cycle again.

One-in-five - a common promotion used by telemarketers where potential customers are notified that they are guaranteed to receive one of the five listed awards currently being given away. These awards are usually listed in order of descending value and often include an automobile, cashier's check, vacation package, jewelry, etc. Variations on this theme include a "two-in-six" or allowing the customer to delete one of the prizes from those listed.

Outbound - Unsolicited telephone calls to customer contacts generated exclusively through "cold calling." Telemarketers may purchase "lead lists" and sales reps call these leads without invitation. Or, the telemarketer may simply call every antique sounding name in the telephone book.

Pitch – A pitch is the actual promotion or scam. Typical pitches may involve a prize award, advance fee credit card offer, charitable solicitation, or lottery offer. The pitch is usually printed as a "script" read over the telephone by the

telemarketer. Experienced telemarketers modify the pitch as needed to obtain the cooperation of the victim.

Rebuttal - Standard responses used by sales reps to overcome typical customer objections. "Rebuttals" are often preprinted and readily available to the sales rep in order to help overcome customer hesitancy to buy into the scam.

Recovery room - Boiler rooms that tell victims that, for an up-front fee, they can obtain refunds from companies that previously defrauded them. Often times the recovery room is the same telemarketing operation that originally defrauded the victim - a particularly deceptive form of reloading.

Reload - any attempt to resell a customer who has already been scammed by the telemarketing operation. Customers who have made a purchase in a previous promotion are often re-contacted and promised the chance of winning more valuable awards in exchange for a subsequent purchase or the payment of fees. Customers can be "reloaded" five, six or more times, each time being promised grander awards or greater chances of winning.

Rip & Tear – Crooked telemarketing operations that collect as much money as possible in a short period of time and relocate before they are identified. Frequently, they use aliases and rent mailboxes, known as "mail drops," to help avoid detection. The telemarketers may use cell telephones, or prepaid calling cards and may operate from extended stay motels. Typical "rip & tears" shut down, move, and reopen using a different business name in a few days to a few months.

Script - the actual printed document used by sales reps to help convey the nature of the promotion. The script contains the "pitch" with all the key selling points deemed necessary to complete the sale. With experience, sales reps tend to develop their own unique pitch or selling style.

Script book – Usually telemarketers have available to them a notebook or three ring binder that may contain leads, scripts, the pitch, rebuttals, and other information needed during solicitation calls. In larger telemarketing operations, each telemarketer may have a script book at their telephone station.

Verification – is used as confirmation of a customer order. Sometime after the sale is made, telemarketers will re-contact the customer, confirm the information provided by the sales rep, and verify that the customer has made his/her payment in the prescribed manner. Sometime the customer may be transferred directly to the "verification department." Verifications are normally handled by a floor manager or by a specialist termed a "verifier." Oftentimes the verification – but not the original pitch – is recorded. This one sided recording is used as leverage against customers that have a change of heart and as false proof of the sale and the legitimacy of the operation to enforcement officials.

Types of Scams

Crooked telemarketers do not care if their victim lives or dies; if their victim spent the grocery money, if there will be heat on in the winter, if the money is from a Social Security check or the end of the retirement nest egg. Whatever it takes to separate the money from the victim a telemarketer will say. There are a number of common telemarketing scams and an infinite number of variations crooked telemarketers use. New scams, new methods of delivery (such as the Internet and TV advertising), and new countries of origin emerge each day. Some of the more common scams include prize promotions and sweepstakes, lottery, charity, recovery rooms, magazine promotions, advance fee loans, investments, low interest credit cards, advance fee credit cards, and office supply scams.

Prize promotions and sweepstakes

The telemarketing cycle may start when someone fills out a contest entry form at a local mall or a senior citizen receives a solicitation in the mail offering a chance to win a contest. The solicitation may require a small entry fee of $5.00 to $20.00. Or the senior will receive a contest offer from a magazine subscription service or reading club trying to sell their products. The senior enters the contest and, believing they have a better chance of winning should they pay the fee or order a product, send along a check. Illegal and deceptive telemarketers as well as legitimate telemarketers purchase lists of these names and telephone numbers as "leads."

The senior will be called by various telemarketing rooms with the news that they are the grand prize award winner or they have been "specially selected" or are "guaranteed to receive" a fabulous prize. The list of prizes might include a new car, $25,000 in cash, a trip to Hawaii or $100 in merchandise certificates. The chances of winning the "fabulous" prizes are 1:3,000,000, whereas the chances of winning the merchandise certificates, which are usually worthless, are usually 1:1. The prize promotion rooms lure consumers into buying overpriced merchandise like worthless travel programs, ineffective health care products, alarm and medical alert systems, jewelry and other items.

Sweepstakes rooms confirm the recipient of the call is the winner of some major cash giveaway. The caller will represent a bogus company using a made up "telephone name." The winner is required to mail or wire money to pay the taxes, bonding agent, import duty, customs fees, courier fees or some other charge before they can get their check. Sometimes telemarketers use commonly known names used in other solicitations from national promotions like Publishers Clearinghouse or Reader's Digest to add "legitimacy" to the pitch. The victim may be told, "The Prize Patrol will be at your door with your check on Friday.

Don't tell anyone we'll take your picture and make a major media announcement after the award. Congratulations." Sweepstakes scams are common and originate from wherever a telemarketer might be found in the US or foreign country.

Lottery scams

"Lottery rooms" are telemarketing boiler rooms that promise the prospective victim an opportunity to purchase winning tickets in foreign lotteries. Lottery rooms often begin identifying prospective victims by mass mailings that offer "free chances" in foreign lotteries for as little as $5 or $10. Those who respond are later contacted by solicitors for the lottery room, who offer the victims substantial returns if they "invest" thousands of dollars in further purchases of lottery tickets. The operations may guarantee the winner will receive a check every thirteen weeks (quarterly) worth at least three times the amount invested from the proceeds of the pooled entry into the foreign lottery. Many victims are "reloaded" by the lottery room, often sending in thousands of dollars in multiple transactions.

Victims are told that they have won substantial sums, but in fact receive no money or only a small percentage of their prior "investments" with the lottery room to induce the victims to continue to send money. Most of the lottery room complaints received by OCA are the result of Canadian telemarketing operations. Some of these scams offer tickets in the German, Austrian, Holland, or Australian National Lotteries even though investigation reveals that the victims send their money to Canada. Lately, some of the lottery scams are requiring the victim furnish a credit card number, or savings account, checking account and bank routing number for payment. A merchant processor in the US under contract to the telemarketer will debit the victim's credit card or bank account. The funds will then be wired to the telemarketer's bank account in a state bordering Canada making it convenient for the telemarketer to cross the border to withdraw the ill gotten proceeds.

Charity fraud

Charity rooms (also known as "telefunding rooms") are telemarketing boiler rooms that prey on consumers' generosity, convincing them that the bogus charity is one to which the consumer has previously pledged a contribution or is one to which they should make a contribution. Often these bogus charities will use names closely related to established legitimate charities. Fraudulent charities are constantly being established using the names of actual fire departments, police departments, and veteran organizations without permission.

One twist recently found a local Georgia reserve deputy being the willing sponsor for a police charity marketed by a telemarketing room in New Jersey. The telemarketing room collected millions of dollars. The deputy received a small fee and a couple of thousand dollars went to the charitable purpose. Charity fraud telemarketers typically keep at least 90% of all money collected.

Recovery room scams

Telemarketers sometimes keep, purchase or trade the customer lists or "mooch" lists of victims that have been swindled and run "recovery operations." In the recovery room pitch, the telemarketers contact victims known to have been taken in and advise them that, for a fee, the recovery room operator can obtain some of their lost funds. In the recovery room scheme the focus of the fraud is the victim's desire to recover losses from previous frauds. Telemarketers, usually from the same organization that defrauded the victim in the first place, call with inside knowledge of the fraud and a promise to recover some or all of the losses if taxes or fees are paid.

A common tactic of recovery room callers is to represent themselves as a government appointed attorney or agent charged with restoring funds to a victim seized by the courts from crooked telemarketers, using their inside knowledge of the victim to, once again, defraud him or her. Now popular with Canadian telemarketing scam operations, the victim is required to pay a custom's fee or bonded agent's fee before the stolen money can be returned. For the telemarketer, the recovery room offers a "reloading" method for depriving victims of their last remaining funds.

Advance fee loans

Consumers with less than stellar credit ratings are prime targets for telemarketers offering advance fee loans. Part of an inbound system, the telemarketing operation will place en masse advertisements brokered to local newspapers around the country. The ads have text similar to "No credit. Poor credit. Need cash? Call 1-800-123-1234." Consumers call the toll free number and are asked a series of questions concerning their current financial status, residence, level of debit and income, and personal information. All callers are "approved" for a loan upon payment of a fee usually ranging from $249 and up. For the advance "processing" or registration fee, the telemarketing companies will promise the loan through an independent company. In a few weeks, the victim receives a letter from the telemarketing company as part of "fulfillment" advising that several institutions are reviewing the loan applications and that the applicant should expect to receive their loan soon. In another few weeks, a letter is sent indicating that none of the financial institutions will offer credit. The victim, who has paid a fee for the "guaranteed" loan is only out more money. In a

legitimate loan situation, a loan application has been completed and a lender identified before any fees are paid. Advance fee loan scams targeting US victims originate from the US and Canada. This type of scam occurs year round but seems to be particularly popular around Christmas targeting low-income groups

Magazine promotions

Fraudulent telemarketers contact consumers under the guise of a prize promotion and attempt to sell them multi-year magazine subscriptions. In a currently operating Atlanta based boiler room under investigation by OCA, a former employee was developed as a confidential informant.

The informant told investigators the operation's telemarketers are contacting thousands of people throughout the US with the exception of Georgia advising them they have won $25,000 or a Ford Explorer and three free magazine subscriptions. It is typical for telemarketers not to contact potential victims in the same state the boiler room is located making it more difficult to prosecute. The victims are told they must purchase one five-year magazine subscription to qualify for their award. The informant stated that approximately 80% of those receiving the telephone calls are senior citizens between the ages of 65 and 93.

Employees in the "sales department" make the initial outbound calls. Once sold, the consumer is passed to a "capper" who obtains the customer's bank account or credit card numbers. Later, the customer information is passed to the "re-verification department" which re-contacts the customer. The re-verification department tape-records the final conversation wherein the customer is again asked to agree to the terms of the offer. The informant stated that many of those called by the re-verification department agree to the purchase of one magazine for sixty months and allow their charge cards or accounts to be debited for the following eleven months. The amount debited during the period is usually $84.85 a month or $933.35 over the eleven month period. In addition, many of the clients are told that they cannot cancel the order because the magazines are ordered in advance for the entire sixty-month period. In fact the magazines are usually ordered four months after the sale and are for less than the sixty-month period. The informant stated that many customers ask during re-verification when the company will provide them their $25,000 prize check or the Ford Explorer. When asked the re-verification department employees tell these clients that they didn't actually win yet, but would be entered into a contest. Some decline to proceed, but many more simply do not ask any questions.

The informant stated that approximately 100 to 150 new sales are made each day and that the operation conservatively brings in $93,000 a day. The boiler room operates two shifts of telemarketers from 9:30 AM to 10 PM. The

informant indicated that the owners and managers are aware that the employees are intentionally targeting senior citizens and lying to customers.

This magazine room started a collections department. Four letters and a series of telephone calls and threats of credit problems are made to "errant customers" to obtain payments. The informant conservatively estimated that the collections employees alone bring in approximately $10,000 each week. Declined credit card transactions and insufficient funds denials from direct bank account debits are run once or twice a week to try to "get a hit on cards that didn't take it before."

Investments

Precious stones, gold coins, lithographs by famous artists, rare coins, "unleaded gas futures" and Japanese Yen currency options are a few of the investments offered by fraudulent telemarketers. In Atlanta one currency option scam netted 1.3 million dollars in ten months and a second took in over 17 million dollars in a year and a half. A desire by investors to grow their nest eggs has provided opportunities for fraudulent telemarketers acting as investment broker / dealers to market high-risk or completely bogus investments. Many of the customers are elderly. The annual cost to victims of this type of fraud can be staggering. But the real toll is the losses sustained by those individuals on limited incomes who invest their retirement savings never to see them again.

Many investment fraud approaches involve a telemarketing solicitation. The calls may be high volume random cold calls or from leads generated by investment advertisements viewed on the television or lists obtained from lead brokers like "Wall Street Direct." Investment "cold calls" are oftentimes made using brokerage firm customer lists or lists of individuals meeting certain income criteria culled from public sources. Investors who respond to an advertisement offering investor advice or those who fill out a card requesting pamphlets or brochures may find themselves on a telemarketer's lead list. Low-income groups are not typical victims of investment fraud operators.

Investment scam artists are quite capable. They may create an air of authenticity by renting "high dollar" office space and maintaining a strict business attire dress code. They use seductive sales pitches chock full of misrepresentations based upon current events to convince potential victims that their investment opportunity is a sure thing. Many claim that they are privileged to inside information and guarantee a big return within a short time. Many give examples of how much money they have made themselves in the same investment but that the investor must act immediately due to movement in the market.

An outbreak of foreign currency scam telemarketing boiler rooms related to organized crime set up in late 1997 and continues to operate today using offshore bank accounts and obfuscation tactics to shield them from law enforcement scrutiny. In foreign currency scams investors are encouraged to buy short-term Japanese Yen options. The telemarketers charge a front-end commission from each investment. Investor funds are commingled and wire transferred to offshore accounts in the Commonwealth of the Bahamas or other countries that have seemingly impenetrable bank secrecy laws.

Once the investor has sent money to the "broker," there is little verifiable information to confirm the status of investments. Some investors receive statements from these "markets" established in other countries that rarely track legitimate markets for similar investments. Telemarketers acting as the investor's broker make follow-up calls to the investor highlighting the rapid growth within their portfolio and to encourage them to part with even more money. The fraud may also include frequent trading in the investor's account between different foreign currencies, known as "churning" in order to generate commissions and to further confuse the investor about the nature of the investments and the amount of money actually invested. In actuality, the telemarketer has obtained the services of a "market maker" to facilitate the appearance of trading. The market maker and the telemarketing boiler room split the investment on the "back end" informing the investor, "unfortunately, the market didn't go your way." The Atlanta telemarketing rooms were organized and connected to boiler rooms in New Jersey, Illinois, New York, Florida and Nassau, Bahamas. After the Atlanta boiler rooms shut down, the same telemarketers have now begun the process of establishing new boiler rooms in the Philippines and Spain.

Low interest credit cards

Fraudulent telemarketers also market so-called "low interest" cards. Victims are told their current, high interest, major credit card can be exchanged for a low-interest card. For a fee of only $100 to $300, the firm will send materials enabling the victim to make the exchange. The telemarketer will ask for the victim's current credit card number and card balance to begin the process. Sometimes the telemarketer will inform the victim that the fee will be charged to their current card. Or, the caller will ask for the victim's savings or checking account and bank routing number to electronically debit (ACH) the account. If the customer questions the fee, the telemarketer will give examples of interest savings for typical card balances to explain the saving far exceed the fee charged. Eventually the victim will receive nothing more than a list of banks that offer low interest credit cards. Complaints received by OCA indicate that low interest credit card scams targeting Georgians seem to be popular with Canadian telemarketing rooms.

Advance fee credit cards

"Credit repair" telemarketers sometimes market single merchant credit cards coupled with a major credit card offer. The telemarketers imply in the sales pitch that the customer will receive a private catalog credit card along with a VISA or MasterCard upon receipt of a $79 to $129 fee. The use of the private credit card, the caller is told, will help to establish or reestablish good credit. The actual card turns out to be nothing more than a limited line of credit from the private catalog. The catalog, usually a copy machine reproduced compilation of photos and prices may offer nothing of interest to the cardholder rendering the private card useless. No major credit card is ever issued. Victims may receive a letter indicating that using the private card will help the victim reestablish credit to obtain a VISA or MasterCard and a list of banks that offer major credit cards. In addition to telemarketing prohibitions, Georgia and several other states have passed specific laws declaring advance fee credit repair an offense.

Office supply

Businesses deal with a variety of suppliers for purchases of office supplies, copy machine toner, fax paper, and other products regularly used in day-to-day duties. Office supply scams involve the fraudulent sale of inferior and unwanted products to businesses, often based on representations that the products are part of the "standard order." Telemarketers target companies that have inadequate ordering control procedures, have no designated employee responsible for ordering supplies, fail to institute adequate accounting safeguards (such as purchase orders and authorization forms), or are so large that the order may simply "slip through the cracks."

Fraudulent office supply dealers are called "toner-phoners" or "paper pirates." The names come from two popular products marketed to unsuspecting businesses. A caller purporting to represent a legitimate copying machine service center will contact a company representative to "confirm" an order "already placed" for a new supply of copying machine toner or paper. Both products are normally used by businesses and are frequently re-ordered. A fraudulent dealer, therefore, does not always arouse suspicion when calling to confirm an order.

It is common for fraudulent telemarketers to contact the company in advance and be able to gain valuable information about the brand of copy machine used - sometimes even the machine's serial number. They may also use this preliminary contact to determine whether the company has a designated employee responsible for purchasing supplies. This information is used to earmark likely targets.

There is no guarantee that the products will ever be sent to the company. Instead, the fraudulent dealer relies on the probability that the unsuspecting company will pay the invoice without checking to verify actual receipt of the product. If the unsolicited order has been sent to the company, the fraudulent operators send their bill and, if the company resists paying, they employ aggressive collection techniques to obtain payment.

Other scams include telephone cramming and slamming, credit card protection schemes, travel and vacation offers, work at home programs, and more limited only to the imagination of the crooked telemarketer.

Statistics

It is very difficult to get accurate specific statistics on the number of telemarketing fraud victims; amount lost by these victims, and the city, state, or country that the telemarketing fraud boiler rooms are operating from.

Telemarketing fraud is known to be a vastly underreported crime and there is no national crime database that is all-inclusive. By far the majority of crimes are reported directly to city and county police and sheriff's departments. Many police officers and sheriff's deputies do not recognize that telemarketing fraud is a crime, even if a victim attempts to make a report. Telemarketing fraud frequently crosses jurisdictional lines and the victim is told to report the crime to the agency where the boiler room is located. Even when the crime is recognized by law enforcement and reported by the victim, depending on the specific complaint filed, it will not appear in national statistics. The FBI's Uniform Crime Reports category that is closest in definition to telemarketing fraud is "larceny" in the Part II crimes. It is unlikely that telemarketing complaints are included, and if so, are lumped into the generic "larceny" category.

Throughout the 1990's and up until this year, those knowledgeable in telemarketing fraud prevention and investigation have suggested the estimated annual loss to victims in the US was $40,000,000,000. The origin of this figure can be traced back to testimony provided in hearings held in the early 90s and stems from unknown data.

The Georgia Governor's Office of Consumer Affairs receives thousands of consumer complaints each year, both from Georgia citizens and from residents of other states complaining against Georgia based businesses. From January 1, 1999 through June 4, 2001 OCA received 6,241 complaints of promotion, magazine, and recovery room type telemarketing scams alone. This figure may not include credit card scams, advance fee loans, investment scams, lottery scams and other telemarketing scams. OCA figures and estimates suggest that telemarketers steal 300 to 400 million dollars each year from Georgians alone.

Investigations conducted by OCA involving Georgia based boiler rooms may start with a $99 complaint but have always escalated to the discovery of fraud losses of more than a quarter million dollars each. Several OCA investigations have lead to the discovery of direct fraud losses in excess of 1 million dollars to over 17 million dollars. One Georgia based magazine scam currently under investigation by OCA is known to steal nearly 100 thousand dollars each day they operate. Another case that started with a Georgian losing $249.00 lead to the discovery that the Canadian telemarketer involved had processed 1.8 million dollars in transactions during the preceding year. While Ohio Attorney General Betty Montgomery speaking this year at the National Association of Attorney's General Regional Telemarketing Fraud Enforcement Seminar in Cleveland, Ohio estimated that residents in her state lose 1.5 billion dollars a year to telemarketers. Keeping in mind that telemarketing fraud is a vastly underreported crime and the number and nature of complaints received, the amount lost is probably higher than the 40 billion dollar figure reported in the 90s.

Victim Demographics and Scams

Telemarketing scams tend to follow certain demographic lines. For instance prize promotions, sweepstakes and lottery scams tend to target the elderly. While, advance fee credit card scams tend to affect those aged in their twenties to thirties. It usually isn't by coincidence that certain groups are affected more depending upon the nature of the scam.

One telemarketing boiler room in Marietta, Georgia hawked advance fee credit cards to hundreds of people across the US. The telemarketers called victims and told them, "You were turned down in the past for our credit card, but we've reviewed your records and decided to offer you, guaranteed, a VISA along with a "Credit Plus" card, for a one time fee of $99." The telemarketers funneled money through a merchant processing service and bank accounts in Orem, Utah. The "Credit Plus" package turned out to be a product from a telemarketing supplier in Missouri that required an extra $49 fee to get his "Credit Plus Card." The interesting part, however, was the discovery of the lead source.

The leads used by the boiler room were purchased from a lead broker in Greenville, Mississippi for $5 a name. Upon further investigation it was learned that the lead broker was mailing out his own slick two-color printed "pre-approved" credit card applications. The applications included fill in blanks for name, address, mother's maiden name, closest relative, checking and savings account balances, bank account numbers, bank routing numbers, and more. The applications were designed as a return mailer that simply folded over to reveal the return address in Mississippi. Once the applications were returned,

the lead broker sent out letters indicating that the application was denied because the applicant didn't meet the credit requirements. The owner of the Marietta boiler room specifically requested leads "from people that had applied for a credit card, but were turned down." The script used in Marietta was designed to take advantage of the past "credit card denial" to target specific victims. The same specific targeting of victims happens with sweepstakes entry lists, lists of people that have requested investment information, lists of lottery participants, and others.

Seniors as Victims

Telemarketing fraud tends to disproportionately affect senior citizens. Experience in working telemarketing complaints has lead to the realization that seniors oftentimes have a more trusting mindset than younger generations. This may be because our current seniors grew up in a culture that was more trusting. A handshake or even a promise to do something is given more weight than by today's generations; even considered to be like a contract. When a telemarketer calls to say, "Congratulations Roselyn. Never again will you want for money. You are the grand prize award winner in Royal Marketing's $100,000 prize giveaway!" The senior tends to believe. When that same senior is told they must pay $3,360 for the taxes on the award, it must be true, because taxes are a normal part of life and expected on everything we earn or receive.

Sometimes senior victims are afflicted with Alzheimer's or some form of mental dementia that causes them to be open to any suggestion made by the telemarketer. Most will not recall the conversation later during an interview, if a law enforcement officer happens to learn of the scam. Seniors tend to stay home in proximity to the telephone because of physical limitations or by choice. Some of these seniors are lonely and more willing to engage in drawn out or multiple conversations with telemarketers. Some believe it is rude to hang up on someone, even a telemarketer. In some instances the telemarketer will become a phone friend, reducing the senior's loneliness and building trust, while cleaning out the senior's retirement savings. Whatever the reasons, the result is that seniors in general tend to be victims more often than other age groups. With the rise in the age of the US population the number of seniors victimized will probably rise as well.

One of the more despicable aspects of telemarketing fraud is the fact that telemarketers do not care about the senior's ability to pay the fees. Criminal telemarketers will say anything to get money. Telemarketers are known to threaten to contact the IRS to report the senior for nonpayment of taxes on their prize award and will even suggest that the senior's Social Security check will be garnished if the tax isn't paid. The net effect is a level of coercion that is difficult to hang up on, let alone dismiss as a scam. In some instances this means the power bill won't get paid and the cabinet will be empty.

Once the fraud has occurred the senior may be afraid to report it. Some adult children of seniors look at their parents as a burden. When they learn that mom or dad has lost hundreds or thousands of dollars to telemarketing scams, they may get the notion that the senior can't take care of their own finances. The senior victim may fear their independence will be taken away with their checkbook. Others fear their children will force them to leave their home to live in a nursing home or an assisted living community. The pressure and stress especially can cause health to diminish. The victimization of seniors is just one unpleasant part of the equation.

Investigation Methods

The Georgia Governor's Office of Consumer Affairs (OCA) is charged with civil and criminal enforcement of the Fair Business Practices Act of the Official Code of Georgia Annotated and criminal laws prohibiting telemarketing fraud, Internet fraud, identity theft, and home repair fraud. The OCA maintains a small staff of highly competent civil and criminal investigators whose duty it is to ferret out these would-be telemarketing scam artists, identity thieves, home repair fraudsters, and errant Internet marketers, believed responsible for stealing billions of dollars each year. Tools at our disposal include state level authority to subpoena records and testimony, search warrants, cease and desist orders, temporary restraining orders, arrest warrants and all other remedies available in the civil and criminal courts. The OCA's criminal investigators are sworn and certified police officers and have the responsibility and the duty to enforce the criminal laws of Georgia. Our criminal investigators routinely use search warrants and arrest warrants as effective tools to combat telemarketing fraud when the boiler rooms are within Georgia. Investigating so called "victim venue" cases (where the victim resides within our criminal jurisdiction, but the telemarketers are in another state or country) can be much more challenging.

Civil verses criminal enforcement action

Civil actions may result in the seizure of the remaining funds obtained by the perpetrators of telemarketing fraud and force the telemarketers to stop operations temporarily. A receiver may be appointed to take over the company's operations and eventually (once the receiver determines the company is fraudulent) the company closes. However, collection of civil judgments against telemarketers seems to be limited to collecting those fraud proceeds not yet spent and successful collection seems to be the exception and not the rule. A case in point involves former Atlanta telemarketers. Recently a court ordered the offenders to pay restitution to their victims and further ordered the payment of a twenty million dollar civil judgment. The telemarketers attempted to avail themselves of the federal bankruptcy protections to no avail. It didn't matter

though, because none of the telemarketers had attachable assets left to enforce the judgment.

Civil action may be appropriate against telemarketing rooms that operate legitimately or semi-legitimately, that have addressed consumer complaints, and are amenable to corrective action, or when the level of proof needed for criminal prosecution cannot be met. Telemarketing operations that are established with the intent to commit fraud do not seem to be deterred from their fraudulent objective by civil enforcement action. The telemarketers are pushed into someone else's jurisdiction or simply open up again using the same scam and a new business name.

Criminal actions against fraudulent telemarketers may result in the seizure of the telemarketer's entire operation. All of the equipment, computers, scripts, leads, telephones, facsimile machines and more may be inculpatory evidence of the fraud operation and is routinely seized with search warrants. Bank accounts containing the remaining proceeds of the fraud are frozen. Anyone that rises to the level of criminal culpability including the owners, managers, and highest paid telemarketers may be charged. Court criminal sentences of telemarketers seems to track about the same level as would be applied to felony theft or embezzlement offenders and may include restitution and jail time or restitution, probation and fines depending on jurisdiction.

Investigation processes

White-collar crime investigations require a certain ability to look beyond the deception. Telemarketers, like perpetrators of identity theft, try to conceal their true identity and location. Telemarketers obtain mailboxes at commercial mail receiving facilities (commonly known as mail drops). They use incorporated shell businesses to obtain commercial bank accounts to receive the fraud proceeds. The bank accounts may be in another state or even offshore. Canadian telemarketers use bank wire transfers or establish bank accounts in border-states to occasionally cross into the US to recover the fraud proceeds. Telephone service from long distance companies is changed every few months or cell telephones and prepaid calling cards are used to further conceal the trail.

Telemarketers located in Canada use US based merchant processors and mail drop addresses to convince the intended victim that the telemarketing company is in the US. While, private company wire transfers, cash, bank checks and money orders are used to get the money to Canada. Western Union security officials commented recently that they believe the majority of the wire transfers made through their system to Canada from the US is related to fraud.

Two things are a given in telemarketing fraud investigations: there is a telephone call and a transfer of money. Telemarketing fraud investigators initially

try to follow the money to determine the final disposition of the funds. If the money crosses out of the US the trail becomes exponentially harder to follow.

Crooked telemarketers routinely store their transaction records, leads, scripts and other items needed to run the criminal enterprise on computers. Particular care must be taken when recovering computer evidence to avoid inadvertent alteration or destruction of the evidence. Most police officers are unfamiliar or uncomfortable with the proper methods used to seize and process computer evidence. OCA Investigators are cross-trained in computer forensics.

Cross Border Concerns

The last couple of years have seen a dramatic rise in the number of Canadian telemarketing boiler room complaints OCA has received. Telemarketing complaints filed against large US based boiler rooms may develop into time consuming, difficult investigations, but there is a fair chance that the perpetrators will be apprehended at the conclusion. US prosecutions against foreign-based telemarketers seem to be almost non-existent.

Rip and Tear telemarketing operations may only be around for a couple of weeks to a few months before they disappear, only to set up shop again under another name. The current process for obtaining bank records or telephone records from another country (needed in almost every investigation) is time consuming and difficult. The investigating agency must make an application for assistance through the Department of Justice (DOJ) Office of International Affairs pursuant to letters rogatory or a Mutual Legal Assistance Treaty (MLAT) between the US and the foreign country. The process of obtaining assistance from DOJ to the state or local level may require several weeks or months. Once approved by DOJ the MLAT request is communicated to the foreign country and if approved by that country, may still take months or years to fulfill.

One example of the difficulty in obtaining foreign records involves two multi-million dollar telemarketing investment rooms that operated in Atlanta. The process at DOJ consumed four months before the request for records was communicated to the Commonwealth of the Bahamas. Twenty-six months later OCA has received only a trickle of bank and corporation records needed in the investigation, while the legitimacy of the Treaty itself is challenged in the Bahamian Courts. There is slim hope that any of the several million dollars stolen from US victims and wired to Nassau, remains in the accounts.

Canadian law enforcement officials recognize the problem of telemarketing fraud originating from within their borders. Several Canadian initiatives such as Phone Busters and Project Colt help, but do far too little alone to stop the problem. Canadian law enforcement officers have indicated a concern that a perception is developing that not just crooked telemarketers but

Canadians are stealing from US citizens. And, that there is a misconstrued notion that Canadians are not as concerned as they should be since Canadians are not the victims of the thefts.

Impediments to Prosecution

Telemarketing cases may require considerable time and resource expenditures. Cases are usually manpower intensive often requiring the investigator follow bank accounts, telephone numbers, and mail drops. Victims and witnesses must be located and interviewed. Some agencies do not have the time to spare on lengthy investigations. Even if an investigation successfully identifies those responsible, it may be a challenge to obtain a commitment from a prosecutor. Prosecutors not familiar with telemarketing fraud or even white-collar crime cases are uncomfortable presenting these types of cases before a jury.

Investigators must "follow the money" from the victim to the telemarketer. The trail usually leads to the identification of bank accounts used by the perpetrators. Most banks charge law enforcement agencies for the production of records. The cost of bank records can be hundreds and even thousands of dollars for each case. It doesn't take long for the strain of document recovery costs to affect decisions on accepting new cases.

Senior victims may have some type of physical limitation due to health. These limitations cause difficulty in travel should a trial become necessary. Some seniors die before the case can make it through the inevitable delays caused by the backlog in the court systems. The victim is usually in a state other than the boiler room. If a trial is called, in most cases, the victim must be brought in. Witness travel cost is yet another burden on a prosecutor's budget.

The best evidence of a telemarketer's criminal intent to defraud is listening in on the conversation when the "pitch is being thrown." However, it is very difficult for us to obtain court-authorized surveillance on target telephones. Surreptitious recording is usually an option only in the largest, long-term investigations of active boiler rooms. The majority of telemarketing fraud rooms are short term "rip and tears." Another option is to school potential victims to record conversations on their own recorders when telemarketers call. This is applicable only to victims in states that allow one-party consent and only helps in future investigations.

Currently there is a lack of equitable sharing of information and cooperation from some federal law enforcement agencies. State and local investigations may play second fiddle to a federal agency's desire to play a lead roll in an investigation. Even though many US Attorneys Offices set minimum dollar amounts before prosecutions are initiated and the case may not reach that level. Certain federal investigative agencies like the Internal Revenue Service

Criminal Investigation Division operate under rules and laws that prevent them from providing information to state and local law officers. The lack of cooperation, either because of federal agency stature or because of policy or privacy laws, leave state and local investigators with the choice of providing case information up a "one way street" or not sharing at all.

Another factor is the trend of telemarketers to operate across international borders. The North American Free Trade Agreement (NAFTA) helped to knock down trade barriers in North America, but nothing has been done to effectively knock down the law enforcement barriers. Telemarketers operate from Canada with anonymity from most law enforcement agencies in the US. Money stolen from US citizens crosses the Canadian border each day, but the telephone records, bank records and other assistance needed to investigate the scam can't get through in a timely manner. If a case can be made in the US, usually an arrest warrant is issued with the hope that the perpetrator will be stopped by Customs at the US border trying to enter. Discussions with other law enforcement officers leads to the impression that the extradition process required to bring a Canadian telemarketer to the US to stand trial is difficult if not impossible.

Telemarketers will shield and launder the proceeds of their fraud in other countries with onerous bank secrecy laws. Some of these accounts are established in the same countries used to hide drug money such as the Commonwealth of the Bahamas and the Turks and Caicos Islands. Recently, OCA followed credit card charges processed through Vilnius, Russia; received information of a former Atlanta based boiler room now setting up in Spain; and, learned that a convicted telemarketer on bond fled to Manila, Philippines. Telemarketing fraud targeting US citizens is going global.

Suggested Remedies

On thing is certain, telemarketing fraud is a vastly under reported crime. In Georgia OCA is developing an anonymous survey to present to seniors during outreach programs to get a better number on underreported crimes. The same thing may be helpful on a national level. The National White Collar Crime Center (NWCCC) has conducted a limited national fraud survey, which may be helpful as a starting point. Also helpful would be legislation aimed at reducing records retrieval costs to law enforcement agencies when the perpetrators of fraud use our banking and telephone systems. Alternatively, make additional funding available in grant programs like that established at NWCCC to help pay for records retrieval.

Coordinate an effort between US and Canadian authorities to mutually agree upon an expedited process to obtain telephone and bank records needed in criminal investigations. We need to streamline and expedite the process of

obtaining assistance to US based state and local law enforcement agencies through the Department of Justice Office of International Affairs when requesting foreign law enforcement aid through treaty agreements and letters rogatory. Or, expand the use of Interpol as a gateway for certain requests to foreign authorities for the identification of suspects and the retrieval of records.

Charity fraud is huge in the US. Charities should be required to provide exact accounting of amounts spent on their administration costs verses the amount spent on the charitable purpose. This information should be provided in all solicitations (Internet, mail, telephone, and other advertising). Or, adopt legislation that requires entities that wish to be recognized as a charity to spend a certain portion of all money received on the stated charitable purpose, perhaps 75%.

The Fedwire, Chips, S.W.I.F.T., Western Union and MoneyGram wire transfer systems are used to move huge amounts of money each day. Telemarketers use the wire transfer systems to receive money from the victim and to launder telemarketing fraud proceeds in "offshore" out of country banks. The Fedwire, Chips and S.W.I.F.T. systems are used to wire money from account to account by investment banks, commercial banks, securities broker / dealers and other financial institutions. Money launderers use these systems by aggregating fraud proceeds from smaller accounts, commingling the money into larger accounts then wiring the funds through offshore banks in countries with secretive banking systems such as in the Commonwealth of the Bahamas. Western Union and MoneyGram are private systems used to wire money from individual to individual and are commonly used as a direct source from the victim of telemarketing to the perpetrator. Telemarketers routinely use "runners" or couriers to receive the wired funds. Small private wire transfers may be picked up at thousands of Western Union or MoneyGram offices located in grocery stores, check cashing establishments, and stand alone offices. Wire transfers through the private systems do not require the recipient to show proof of identity for amounts under a certain dollar level, usually several hundreds of dollars. Telemarketers know this and regularly require victims to send amounts multiple times under the "identification required" level. Smaller amounts may be received through these systems without ID by using an agreed upon password and test question system. The victim is told the question and password to provide the wire-sending outlet.

New regulation of private system in-country and out-of-country wire transfers that require the individuals receiving funds to provide an acceptable form of photo identification such as a passport, immigrant alien ID card, state or province issued driver's license or identification card, would cut down on the use of the wire transfer systems by white collar criminals. Additionally, as a pre-curser to accepting deposits or wire transfers from US branches, require banks that have corporate offices or branches in the US and a foreign country, to

provide records upon subpoena or search warrant issued to that US office for accounts established in a foreign branch bank.

Tracking telephone companies across international borders is also difficult. Congress should require telephone companies that operate and assign telephone numbers under the North American Numbering Plan to maintain a US registered agent and provide records upon receipt of legal process in the US to that agent.

Crooked telemarketers regularly establish mail drop locations in the US to receive and forward money sent by victims through the US Post and private carriers such as UPS and FedEx. US Postal Regulations require that Alternate Commercial Mail Receiving facilities (mail drops) complete Postal Form 1583 to identify the private mailbox holder. PF1583 is open to postal inspection upon request, but not necessarily to other law enforcement agencies, without a subpoena. The US Postal Regulations should be modified to require that Alternate Commercial Mail Receiving Agencies allow inspection and provide copies of PF1583 upon the request of any law enforcement officer and that these outlets must require positive identification of anyone wishing to rent such a private mailbox. Additional vigilance should be given by Postal Inspectors to US Post Office boxes rented in states bordering Canada to prevent fraudulent use by telemarketers. Finally, restrictions should be placed on all mail-forwarding orders from US mail drops and post offices where the mail will be forwarded to another country.

Continue supporting the National White Collar Crime Center (NWCCC), National Association of Attorneys General (NAAG), and the American Prosecutor's Research Institute's (APRI) efforts to provide telemarketing fraud training to prosecutors, investigators and victim witness advocates. Encourage additional training and support of investigations to law enforcement agencies through the Bureau of Justice Assistance (BJA), NWCCC or other grant related programs.

It is an unfortunate fact that often times a case made against a crooked telemarketer will spend months or years in the court system before trial. And, all too often senior victims pass away in the interim. Not only does this deprive that victim from obtaining justice, one less victim may cause the offender to receive a lesser punishment or end a prosecution without any punishment. Video statements obtained by law enforcement officers from seniors that have passed away during the course of an investigation should be admissible later at trial.

Most law enforcement officers are not familiar with nor do they understand telemarketing fraud as a crime. Telemarketing fraud is theft using the telephone as the conduit to conduct the crime. Theft is generally viewed as a "crime against property." I submit however that telemarketers can affect much more than just the pocketbook or wallet of the victim. As previously discussed, senior

citizens are particularly vulnerable to criminal telemarketers. Sometimes a senior will expend their life savings, lose self-respect, and lose hope that life will ever get better, all because of the abuse heaped on the senior victim by some telemarketers. Most officers do not understand that telemarketing fraud often times affects the victim much more than just financially. In certain instances telemarketing fraud is a "crime against a person."

The Georgia Governor's Office of Consumer Affairs is trying to help Georgia law enforcement officers understand telemarketing fraud and the dramatic effect it often has on its victims. OCA is producing training programs to be offered to Georgia law officers in our regional and state police academies. More important though is the production of training videotapes targeting both law enforcement and senior citizen groups. The tapes, produced by Georgia Public Television, will be distributed to most of the law enforcement agencies in Georgia along with a short training program and to adult protective and other related agencies. These tapes and follow up training programs will provide Georgia law officers and senior service agencies with a heightened understanding of the crime of telemarketing fraud including its investigation and the dramatic effect crooked telemarketing has on its victims. Education of law enforcement officers and potential victims may also be provided through support of public service announcements on television and radio and through inserts included with telephone bills on the national level. Copies of Georgia's law enforcement component training tape have been included with this document.

Telemarketing fraud *is* a misunderstood crime. So why then do people fall for telemarketing scams? Victims are always lied to, cheated, and coerced to part with their money. Some victims believe they are conducting business with a reputable firm or are honestly trying to pay the taxes on money due to them. The typical victim is not greedy or stupid as some may misconceive. Among the many victims I've interviewed, I have had the pleasure of meeting with an Atlanta victim on many occasions named Frances Rossman. Ms. Rossman is a very intelligent 94 year old woman who has been scammed repeatedly by telemarketers from the US and Canada. I asked Ms. Rossman how she initially became involved with crooked telemarketers. She replied, "When I turned 90 I got tired of being poor!" Ms. Rossman fell prey simply to the desire each of us has to better our lives.

Respectfully submitted,

Monty D. Mohr
Deputy Director of Investigations
Georgia Governor's Office of Consumer Affairs

Senate Permanent Subcommittee
On Investigations
EXHIBIT # 14

CROSS - BORDER FRAUD HEARING
VICTIM IMPACT STATEMENT
(Son of Victim)

I believe that the public does not fully appreciate the serious effect that telephone fraud has on its victims and their families. I applaud the efforts this committee is making to improve public awareness of this serious problem.

I understand that cases of telephone fraud are difficult to prosecute, due to many factors. The perpetrators are often in another country, the victims often do not wish to testify due to embarrassment, or the victims are frequently mentally confused, and therefore would make ineffective witnesses.

Furthermore, some people believe that the victims, as willing participants, are not deserving of much sympathy. This is an attitude that needs to be changed.

There has been great public awareness created regarding the need to protect victims of domestic violence and sexual assault. The media, the courts, and various special interest groups give much attention to assaults on children and to assaults on people who are incapable of resisting. I believe these fraud schemes are analogous, since the victims similarly lack the reasoning skills present in persons of ordinary firmness. The perpetrators of these crimes do so cynically, knowingly, and with the intent to defraud. They make it difficult to recover any of their proceeds, by spending lavishly, and renting, rather than owning, their expensive houses and cars. In addition, some of these individuals have serious drug problems, and use the proceeds for drug purchases.

The amount of money these people take from their victims must be huge, but it is incalculable due to underreporting. Perhaps more public awareness will encourage more victims to come forward.

In my particular situation, I learned in 1999 that my mother was swindled in 1995 by people in Canada. It was only after discovering in 1999 that mother was the victim of a scam involving magazine subscriptions that I began a serious investigation of her finances. This led me ultimately to contact the FBI and finally learn of the Canadian telemarketing fraud. I learned that these operators in Canada somehow got my mother's name and began calling her on the telephone. I understand from speaking to law enforcement sources that these fraudulent telemarketers often purchase lists. These lists are made available by individuals

who place entry forms in shopping malls or businesses asking people to leave their name, address and phone number in a box in order to possibly win a prize. As a widow living alone, her lack of consistent social contact must have made her lonely and vulnerable. Furthermore, she had developed a serious problem with her judgment. Unfortunately, the family did not recognize this problem until too late.

Apparently, these people were able to gain mother's trust, over a number of calls, due to her confused state. They would promise large sums of money would come to her if she cooperated by sending them money. The money was for "taxes" or to enhance her chance of winning the big lottery. They assured her that she was a big winner, but told her she had to keep her winning a secret, or she would forfeit her prize. They also sent her some small trinkets and other items of little value such as a VCR and a television set. She ended up sending by FedEx a total of approximately $100,000 in cashier's checks in sums varying from $6,500 to $30,000. The family had let her handle her own finances. She had been doing her own finances since 1977, when my father died.

In 1999, I worked with the attorney general's office in my state and to get these magazines subscriptions cancelled, but mother had already spent another large sum of money. I secured her power of attorney and took over paying most of her bills. She had been receiving a decent income from her interest and dividends, but she lost around $140,000 altogether, and has no more cash on which to draw interest. She has had to reduce her standard of living a bit, and she also has less financial security. If she needs long-term care, it may be difficult for her to afford that. She continues to be in denial about these things, and gets very defensive when these matters are brought up. Therefore, with her reduced judgment, it is possible that she could be victimized again, despite the best efforts of the family. The family has had to consider the unpleasant possibility of filing incompetency proceedings, but we are reluctant to do so. Mother does not wish her name to get publicized through such hearings, or for any reason connected with my statement here.

In summary, mother has lost approximately $140,000, for which she received some trinkets, a VCR, a small television set, and hundreds of magazines. Some members of the family have been kept unaware of this situation, but others have had to live with this knowledge and worry constantly whether she is still being victimized. Mother tends to blame the messenger of these bad tidings, which is

usually me, rather than those who defrauded her. She still suffers from the delusion that some of the people who took her money cared about her. This situation has damaged our relationship, since she dislikes my trying to control her finances. She gets very upset if I question her regarding these fraudulent schemes. She wants to maintain her independence, and does not welcome my control over her finances.

Some of these telephone fraud operators from Canada have been prosecuted in federal court. No restitution has been made. Mother's telephone number may have been passed along to others, since she was later victimized by the magazine scams. I have now changed her telephone number and had it unlisted, but a clever person might still be able to secure her number and start the cycle all over.

The lesson that I wish I had learned earlier is that ones parents' finances should be scrutinized when the parents become older and show any signs of diminished capacity. Even though the parent might resist, it is better to create that friction than to go through what my family has gone through.

Senate Permanent Subcommittee
On Investigations
EXHIBIT #15

VICTIM IMPACT STATEMENT

Stephen M. Hills
Son of parents who were victimized

In 1999, I found to my dismay that my step mom was gambling. She called it "participating in sweepstakes," but I soon discovered the passion that controlled her, and I could not call it anything but gambling. My step-mom's diary reveals that she filled out her first sweepstakes form through the Reader's Digest on January 22, 1998. From that date ensued, in my dad's words "three years of hell for me."

My father is a retired Presbyterian pastor, who has always been totally opposed to gambling. "You don't get something for nothing" he said repeatedly as I was growing up. He now is 86 and lives in a retirement community just a few miles from me. My step mom died six months ago, thus ending an era in her life that would affect her whole family negatively. At the end of three years, my step mom had lost her life savings that had been accumulated through many years of hard work, and she had borrowed against her life insurance policies. No amount of arguing, confrontation, or friendly persuasion could convince her to stop. In three years she lost between 25 and 30 thousand dollars. My step mom's death and my father's sudden change of address from Bloomington, IL to Columbus OH finally has put a stop to the "endless boxes of paper and empty telephone calls from everywhere." My father now has an unlisted telephone number. When he moved to Columbus, his mail was forwarded to my address where we have screened it for six months. The flow of letters and packages has finally stopped but only just recently. Hopefully, Reader's Digest will never have his new address.

In the U.S., some forms of gambling are legal, and individuals are responsible for any losses that they incur. I argue here that gambling directed at our elderly population is particularly insidious and should be highly regulated. Gambling directed at seniors undermines independence and takes advantage of the vulnerability that comes with old age. In this case it set one family member in conflict with the very people who wished to care for her. Gambling added to a growing number of trials that my step mom faced -- immobility, loss of independence, arthritic pain, and loss of memory. My step mom, in many ways, approached gambling with a childish naivete, while at the same time, fought hard for the independence of her financial affairs. The result was a continuing family conflict that ended only with her death.

Sweepstakes gambling can take place any time and in any place. The lessons we learn about sweepstakes gambling could, in fact, be applied to gambling over the internet as well. Sweepstakes gambling currently relies on the telephone and the mail service to thrive. On the phone, the gambler is often unable and/or unwilling to verify information about the odds of winning. Manipulation of an elderly person's feelings can be easy by phone, where one does not have physical cues that might trigger distrust.

Sweepstakes gambling is private. For two years, only my step mom and my dad were aware of the full extent of involvement. For isolated seniors, it is also enticing. My step mom received call after call from sweepstakes representatives who fed her vanity by sending large numbers of

trinkets and cheap jewelry for which she paid an ever growing sum of "entry fees." Sweepstakes representatives played on every conceivable vulnerability. They posed as "Christians" concerned about my step mom's illnesses. Some posed as custom's officials. "If only you will send us a check for $1500, we will be able to release your award from customs." They posed as the RCMP in Canada, tracking down illegitimate sweepstakes operators. Readers Digest sent low quality tapes and videos for which more and more fees had to be paid. My father tried reason with my step mom, trying to verify that the calls they had received were fake. Nothing worked.

Effect on the family

Until my step mom died, my parents lived on a farm 15 miles outside of Bloomington, IL. My step-sister was increasingly called upon to cook some meals for them. They were determined to stay "on the farm" for as long as possible. My father had had a happy thirteen year marriage, and he increasingly spent more and more time caring for my step mom's needs. He was unwilling to limit her independence any more than was occurring naturally over time. She still drove. She had her own checkbook from which she spent for her share of household expenses. When she first became involved in sweepstakes drawings, my father did not interfere, even though he disapproved. Over time, he assumed the role of "enabler," facilitating her behavior by loaning her money to cover more and more of the losses that she incurred. He did not share with his children what was happening. His finances had always been a very private part of his life. Nevertheless, he had put a modest investment fund in my brother's care when he remarried. My brother first learned of the sweepstakes activity when my father asked to sell some stock.

When I learned of the sweepstakes activity, I confronted my step-mom. It was an unwelcome confrontation, both for her and for my dad. My father shared with me privately the extent of the problem, and I was shocked. I contacted a local chapter of Gambler's Anonymous for advice. I contacted my father's pastor. His pastor discounted my alarm, but the representative from Gambler's Anonymous did not. Based on prior experience, he advised me that further confrontation would probably not be effective -- that no change would occur until my step mom began to feel the full implication of her gambling. He said that my siblings and I should prepare to take care of our parents once they had exhausted their resources. I was extremely worried since I did not know how soon that would occur nor how we would take care of them. Neither I, nor my siblings, lived in Illinois. My step sister was barely able to provide for her own family. I gave my father the Gambler's Anonymous telephone number, knowing that contact would probably not be made.

For a son or a daughter, dealing with sweepstakes gambling is difficult, when parents are very proud of their independence. How could I begin to manage my parents' finances? They didn't want help. I was not legally permitted to control their bank accounts, their expenditures, or any of their financial decisions. I would not want to take away their financial independence under any circumstances. Yet, decisions they made might affect me very personally if their resources were exhausted.

After my step mom died, financial decisions still weighed heavily. My father agreed to pay for all funeral expenses before he knew if there was an insurance policy that had not been liquidated by my step mom. Fortunately, one was found. Three months later, my father decided to move into

a retirement community. With some trepidation, I reviewed with him his financial status. I discovered, to my relief, that he had enough capital to afford to live in the community he had chosen.

All's well that ends well? I think not. My father writes in his diary: "It looked as if our sweet second marriage of thirteen years was going to end in misery and utmost unhappiness -- only the angel of death released us both on December 21st, year 2000. This is why I would like a war started against this evil comparable to the similar war against drugs that our country has been engaged in for a long time."

I hope never to see another copy of Reader's Digest. How did a publication dedicated to wholesome stories and spelling contests go so astray? The problem is bigger than Reader's Digest, however. A country that allows its seniors to be victimized in any way has little to be proud of. We have provided great independence for seniors through social security, through retirement communities, and through driver's license bureaus that are reluctant to take away the independence that driving affords. We must balance independence and freedom with an equal degree of personal protection.

Our older population is vulnerable to sweepstakes because it is a form of gambling that is private -- one does not need to travel to a casino to gamble. It is also terribly convenient -- it can be done at any time and in any place, in the privacy of your own home. To make sweepstakes operators more publicly accountable, they could be required to provide, upon request, a log of phone calls made to any telephone number in the U.S. Family members could call and request the phone call logs made to a loved one's telephone number. Similar regulations could be required for correspondence by mail. Mailings from sweepstakes operators could be obtained only at the central post office for each metropolitan area. Mailings would need to be accompanied by a 'tear off" post card that would notify the recipient of mail to be picked up. The extra cost to the recipient would eliminate the "any time, any place" nature of sweepstakes activity. The additional costs imposed on sweepstakes operators would drive out of business the most marginal ventures -- those most inclined toward exploitation. These are but two suggestions. Testimony may include others, which I will be eager to read. My thanks to the committee for the opportunity to testify.

Sincerely,

Stephen M. Hills
296 Cliffside Dr.
Columbus, OH 43202

Senate Permanent Subcommittee
On Investigations
EXHIBIT #16

501 Pennsylvania Avenue, N.W.
Washington, DC 20001

June 13, 2001

The Honorable Susan Collins
Ranking Member
Governmental Affairs Committee
Subcommittee on Investigation
United States Senate
Washington, DC 20510

Dear Senator Collins,

I am writing with regards to the Governmental Affairs Committee's Permanent Subcommittee on Investigations' forthcoming hearing on *Cross Border Fraud: Improving Transnational Law Enforcement Cooperation*.

The question of telemarketing fraud is one of great importance to our two countries as there are victims and perpetrators on both sides of the border. Since the April 1997 meeting in Washington between Prime Minister Chrétien and President Clinton, both countries have taken significant steps to deal with this problem. As a first step, a Canada-United States Binational Telemarketing Fraud Working Group was instituted to consider the scope of the telemarketing fraud problem and to formulate a series of recommended actions. Seven months after its formation, the Working Group presented its report to Mr. Chrétien and Mr. Clinton, outlining a 14-point strategy of cooperation. I am pleased to inform you that Canada has fulfilled its obligations on all 14 points. Importantly, this fact was reported to the Honourable Lawrence MacAulay, Solicitor General of Canada, and Mrs. Janet Reno, the then U.S. Attorney General, at last year's Canada/U.S. Cross Border Crime Forum, convened in Washington, D.C. in June, 2000.

An important element in combating cross-border fraud is the close teamwork between the enforcement agencies of our two countries, including representatives from the Royal Canadian Mounted Police (RCMP), Canadian municipal and provincial police, Industry Canada, the Federal Bureau of Investigation (FBI), the Federal Trade Commission, the U.S. Postal Service, and U.S. Customs. Canadian and U.S. enforcement officials share a strong history of cooperation and

.../2

partnership to prevent, detect and deter cross-border crimes like telemarketing fraud. Joint inter-agency task forces have been established in three Canadian centres - Vancouver, Toronto, and Montreal (a brief description of these three task forces is included in the RCMP Backgrounder on Telemarketing Fraud Enforcement Initiatives attached at **Tab 1**). Canadian officials will continue to work collaboratively with American partners in addressing emerging issues and ongoing challenges posed by this criminal activity.

You will also be interested to know that telemarketing fraud and related crimes will be a major topic of discussion at the upcoming Fifth Canada/U.S. Cross Border Crime Forum which will take place in Ottawa from June 19 to 20. Telemarketing fraud is now one of four permanent subgroups of the Cross Border Crime Forum; the others being Joint Intelligence, Joint Cooperation and Coordination, and Prosecutions. U.S. Attorney General John Ashcroft and senior U.S. law enforcement officials from Washington and across the U.S. plan to attend. This meeting represents an important opportunity for Mr. Ashcroft to raise American cross border fraud concerns with his Forum Co-Chair, the Solicitor General of Canada, whose Federal Portfolio currently Chairs the Binational Telemarketing Fraud Working Group.

In Canada, we have taken many steps to address telemarketing fraud. Canada continues to improve our ability to deal with cross-border fraud which we now address as part of the Government of Canada's overall efforts to combat organized crime. In a relatively short time span, we have introduced new legislation to amend the *Extradition Act, Mutual Legal Assistance in Criminal Matters*, and the *Competition Act*. In addition, Canada Post released new guidelines concerning prohibitory orders to stop the delivery of mail to known telemarketers. A multi-faceted public education campaign, led by Industry Canada, has been in place in Canada since 1996. As part of the 2000 Federal Budget, the RCMP also significantly augmented its national analytic and intelligence capacities related to economic crime and telemarketing fraud in particular.

In view of the importance of the topic that your Subcommittee will be examining, I would like to offer whatever assistance we can provide. To achieve that goal, I have enclosed material regarding telemarketing fraud prepared by the Department of the Solicitor General and the Royal Canadian Mounted Police (as attached at **Tabs 1, 2, and 3**). This material may be included in the record of your hearing if you wish.

I would also like to draw your attention to some recent American material produced by the U.S. Federal Trade Commission (FTC) which they plan to present to your Subcommittee later this week. These

data underscore the fact that criminal telemarketing fraud activities do not solely involve Canadian-based criminals targeting American citizens. We clearly recognize the large number of criminal telemarketing operations operating out of Canada. However, in the year 2000, the Consumer Sentinel Program, a commercial crime data base of the FTC, registered over 1,300 Canadian complaints regarding travel and vacation, as well as prize pitch and sweepstake scams based out of the U.S.. The State of Florida alone accounts for 91% of travel and vacation complaints reported by Canadian nationals. Further, telemarketing fraud transcends the Canada/U.S. border; to date, the Ontario Provincial Police's Project Phonebusters has documented complaints from 123 countries. These facts must be taken into consideration as part of our continued binational efforts to address the telemarketing fraud problem.

With respect to your invitation to Superintendent Dave Jeggo, the Officer in Charge of the Royal Canadian Mounted Police's Economic Crime Branch, to testify at your hearing, I regret to inform you that he will be unable to attend. This decision is not directed at your committee or the hearing or its topic. Rather, it was based on Canada's longstanding policy to decline requests for Canadian officials to testify before any foreign legislative bodies. The purpose of this policy is to avoid misrepresentation of Canadian policy. It avoids placing Canadian officials under the authority of foreign nations and ensures that they are not placed in a position of conflict between their undertakings to the foreign legislative body and their sworn obligations to Canada.

If you have further questions for the record regarding the Canadian Government's efforts to curb telemarketing fraud, do not hesitate to contact the Embassy. I can assure you that we will make all efforts to provide whatever assistance we can.

Yours sincerely,

Michael Kergin
Ambassador

TAB 1

RCMP Backgrounder on Criminal Telemarketing – Enforcement Initiatives

Criminal telemarketing and related frauds generates $100 million in Canada with victims targeted in Canada, although the majority of victims are in the United States. Telemarketing offences are crimes which involve violations of trust, frequently associated to organized crime. Victims are easily attainable by telephone and internet, and are normally contacted by the criminal telemarketers from long distances. This inhibits law enforcement to investigate and prosecute these cases and to determine the actual number of victims and the total value of the crimes. Legislation governing telemarketing crimes is largely covered by the *Criminal Code* and the *Competition Act* and there is applicable provincial legislation, particularly in Ontario and British Columbia.

Initially, the Royal Canadian Mounted Police (RCMP) did not assume the role of lead agency for Canadian criminal telemarketing investigations in the Provinces of Quebec and Ontario as it did not have the primary criminal law enforcement mandate. In other provinces and territories, the RCMP does have primary jurisdiction in many regions for these types of the crimes. With consideration of the seriousness of these crimes, financial impact, integrity of Canada and relationship to organized crime, the RCMP has decided to take a greater leadership role on a national basis.

Three Canada/U.S. Inter-agency Task Forces:

The RCMP has been active in developing strategies and tactical approaches to deal with criminal telemarketing, much of which is believed to be associated to organized crime. This resulted from knowledge that many boiler rooms were operating in Montreal, and targeting victims in Canada and the United States.

1. ***Project Colt,*** organized by the RCMP Commercial Crime Section in Montreal was formed in April 1998 with a mandate to reduce, prevent and control fraudulent telemarketing operations based in the Montreal area. This project is supported by resource staff from the Montreal Urban Police, Sûreté du Québec, and internationally by the Federal Bureau of Investigation (FBI), United States Postal Inspection Service and the United States Customs Service. This enforcement partnering has resulted in successful criminal investigations and prosecution action. Attached is a news release dated February, 2001 regarding a take down operation of a telemarketing organization. It should be noted that since the implementation of this Project, $14 million dollars has been returned to victims by way of an interdiction program.

2. ***Project Canadian Eagle*** operates from Toronto and is operated by the RCMP Commercial Crime Section, Milton, Ontario. This effort has been supported by an agent of the FBI. This project has targeted a West African international investment scheme, and this case was fast

tracked because of the assistance from the United States. The victims are located in the United States. Secondly, a stock scheme was investigated by the RCMP with the assistance of the FBI and Ontario Securities Commission. Recently arrests and prosecution action resulted which involved fraud and money laundering offences. The case is valued at approximately $4 million. The RCMP will continue to assess the telemarketing crime trends within the Greater Toronto, and provide available support within its mandate to other local enforcement and regulatory agencies in that area.

3. ***Project Emptor*** was initiated by the RCMP Commercial Crime Section, Vancouver to deal with organized crime telemarketers who target the elderly. This RCMP project is assisted by a FBI agent, a representative of Industry Canada, staff from the United States Federal Trade Commission, and the Province of British Columbia. This initiative utilizes the *Mutual Legal Assistance Treaty* process and the *B.C. Provincial Trade Practices Act*. The perpetrators are primarily Canadians and the majority of victims reside in the United States. This project experienced success with numerous arrests and the first successful prosecution in California, resulting in a lengthy jail term and seizure of nearly $13 million in cash and properties, which will be forfeited.

***Public Education and a National Call Centre*:**

Project Phonebusters was initiated by the Ontario Provincial Police in 1993 and was supported by the RCMP, other law enforcement and regulatory agencies and the private sector. Based out of North Bay, Ontario, Phonebusters initially provided a service to Ontario residents by complaint collection concerning telemarketing crimes and investigations. Over the last several years, it has evolved to a service that is accessible across Canada and many parts of the United States. The RCMP has been a strong proponent of this Project since its inception, and has recently signed a *Memorandum of Understanding* as a working agreement to expand the scope of this Project as a National Call Centre.

The RCMP will continue to focus and advance the four identified and dedicated projects, with consideration of improved allocation of human and financial resources. Emphasis is also placed on public education/awareness campaigns to lessen and prevent these crimes from occurring.

Date: June 12, 2001

TAB 2

Recent RCMP Criminal Telemarketing Cases

PROJECT COLT : THE POLICE DISMANTLE A MAJOR ILLICIT TELEMARKETING ORGANIZATION

MONTREAL, *Friday, February 9, 2001*

The Royal Canadian Mounted Police (RCMP) announced that a police operation targeting an illicit telemarketing organization was being conducted in the Montreal, Laval and South Shore areas.

Project Colt investigators, who belong to a number of agencies including the RCMP, *Sûreté du Québec* (SQ), Montreal Urban Community Police Department (MUCPD), the FBI, U.S. Customs Service and U.S. Postal Inspection Service, joined forces to dismantle an illicit telemarketing organization operating in the Montreal area targeting victims who were senior citizens residing in the United States.

This police operation, expected to lead to the arrest of more than 20 subjects, was conducted with the assistance of the Laval Police Department.

"Rip and Tear" Telemarketing Scam

The organization either used *sweepstake* type mail advertising with various sales pitches to recruit their victims, or led them to believe that they had won a settlement in court. In both cases, fraudulent telemarketers told the victims that they were to receive a large amount of money.

The victims had to pay duties or taxes before their cheques could be released and, in the process, were deprived of as much as $50,000 American. Some of the victims had been stung more than once.

GREATER TORONTO AREA:

CASE A:

Toronto West Commercial Crime Section recently concluded a twenty month investigation into a highly complex criminal organization operating in the Greater Toronto Area that was victimizing people around the globe in a high-tech telemarketing and Internet boiler room scheme. Using a virtual boiler room, this criminal group perpetrated a telemarketing stock fraud that victimized people as far away as New Zealand.

TAB 2

In May 1999, the Toronto West Detachment of the RCMP began to receive complaints from investors who had been defrauded in an elaborate "stock swap" scheme. As a result of these complaints, investigators from the RCMP Toronto West Commercial Crime Section immediately initiated a joint investigation in partnership with the FBI and the Ontario Securities Commission. The accused utilized aliases, Internet websites and a variety of false documentation to convince investors of the legitimacy of their criminal enterprise.

To date, the RCMP has received complaints from approximately 150 victim investors from around the world. Their losses total approximately 4 million Canadian dollars. Individual losses range from approximately 1,500 to 675,000 Canadian dollars.

Some victims lost their children's education funds or money they were counting on for their retirement. Our investigation is not yet complete, but the RCMP expects to find that the number of victims and the volume of losses will greatly exceed these figures.

Six persons have been charged in this case with fraud-related offences.

CASE B:

Toronto West Commercial Crime Section initiated an intensive police investigation into a fraudulent gemstone scheme that had defrauded hundred of victims around the world. The accused subjects in this case were charged with conspiring to defraud 92 persons of approximately $5,000,000. This advance fee fraud was carried out through a group of companies purporting to be operating from Switzerland as liquidators of precious gem stones. In furtherance of this fraudulent scheme, numerous off shore shell companies were created by the criminals. Many wire transfers of funds took place through various Swiss and American financial institutions.

The case was unique in that none of the 92 victims had met the accused persons. Identifying the suspects beyond a reasonable doubt as being the subjects on the phone was difficult. It took a very long time to analyze 52 suspect phone numbers matched against 92 victims who each had been contacted on up to 5 personal phone numbers. Some months phone tolls were 40 pages long and the analysis covered a four year period. Also, business services were used in the Cayman Islands, Switzerland and Monaco to hide their identity and give the appearance of operating from a foreign jurisdiction. Additionally, $5 million was laundered through 42 different corporate and personal bank accounts located in Switzerland, Luxembourg, Monaco, the Cayman Islands, Bahamas and Canada. Of this, 1 million has been recovered to date. This was also the first case in Ontario to have the Provincial Government make a *Criminal Code* proceeds of crime lien on a personal residence.

All charged persons were convicted. The principal behind this global fraud was sentenced to five and half years in federal prison for his participation in the fraudulent scheme. The courts seized

and forfeited $444,000 (U.S.) found in his Swiss bank accounts, as well as the equity in the accused's residence. This seizure was estimated to be approximately $200,000 of the home's $500,000 value. All of the incarceration time was in addition to the custody prior to sentencing.

CASE C:

FRIDAY, MAY 18, 2001:
MULTI MILLION DOLLAR TELEMARKETING SCAM DISMANTLED BY THE RCMP

Investigators from the RCMP's Toronto North Detachment, Commercial Crime Section arrested the alleged leader of a sophisticated international telemarketing scheme based in the Toronto area. This investigation began in January, 2000 as a result of a complaint received from an alleged victim. The scam stemmed from the sale of gems and guaranteed profits that never materialized. Victims in this case are from all walks of life and from across the country. Investigators are still sifting through evidence seized as a result of several search warrants executed in relation to this case, however, over $5,000,000 has been identified as being obtained from victims, as a result of this scam. Two individuals were charged with 23 counts of fraud.

CANADIAN STATUS REPORT ON CANADA-UNITED STATES COOPERATION AGAINST CROSS-BORDER TELEMARKETING FRAUD

Working Group Recommendations (1997)	Status Continuing; In Process; Outstanding	Summary Explanation
(1) That the governments and agencies of both countries clearly identify telemarketing fraud as a serious crime; (p.7)	**Continuing**	The Government of Canada's recognition of the seriousness of telemarketing fraud is clearly evidenced by legislation passed in the last few years, and a series of pronouncements by the Prime Minister, Minister of Industry, and Solicitor General of Canada. Telemarketing fraud is also viewed as a major crime linked to organized crime. In addition to changes to the *Competition Act* (Bill C-20); the *Extradition Act* and *Canada Evidence Act* (Bill C-40); and Omnibus *Criminal Code* Amendments (Bill C-51), detailed below, legislation has also been passed related to Proceeds of Crime, and Wiretapping which include elements that impact on telemarketing cases. Over the last few years, various provincial statutes (Alberta, Ontario) have also been passed to deal with telemarketing fraud. With respect to operational enforcement efforts, two interagency task forces, led by the RCMP, have been established in Vancouver *(Project Emptor)* and Montreal *(Project Colt)*; in Toronto, the RCMP participate in a *Greater Toronto Area Fraudulent Telemarketing Consultative Committee*, chaired by Ontario Attorney General's Department. Ontario has assigned a high priority to the vigorous investigation and prosecution of telemarketing fraud cases. On the prevention and public education front, a $300,000 national public education/prevention program, spearheaded by the Deceptive Telemarketing Prevention Forum, was conducted through a private and public sector partnership. New Legislation: **Bill C-20, which amended the federal *Competition Act*, received Royal Assent on March 11, 1999 and introduced a new telemarketing fraud offence that can be committed in two ways:** **"Deceptive telemarketing" offence** – Prohibits specific telephone practices or schemes commonly used by telemarketers. Such practices include providing false or misleading information, operating prize-promotion schemes or offering products at grossly inflated values where delivery is conditional on prior payment. **Failure to disclose specified information** – It is an offence if the telemarketer fails to identify him/herself, disclose the purpose of the call, the nature of the product or service being offered, the price, and any material restrictions or conditions which apply to delivery (see 52.1 (3) *Competition Act at Tab 1)*. This new provision, which allows federal prosecution of telemarketing fraud, complements another provision found in the *Criminal Code* which is to be prosecuted by provincial authorities.

		The offence created by Bill C-20 is hybrid; it is punishable by five years imprisonment and/or an unlimited fine for the indictable offence or by a maximum of 1 year imprisonment and/or a $200, 000 fine for the summary offence (ss.52.1 (9) *Competition Act*). The *Criminal Code* offence of fraud is punishable by ten years imprisonment where the value of the suspect/matter of the fraud is at least $5,000. It is punishable by two years imprisonment in other cases. The *Criminal Code of Canada* was also amended (C-51 Royal Assent on March 11, 1999) to make the telemarketing fraud an "enterprise crime" offence thereby authorizing the state to seize and forfeit proceeds of crime generated by the activity. Bill C-20 extended the *Criminal Code* wiretap provisions to authorize **electronic surveillance** where telemarketing offences are investigated (183 cr.) *(see s. 462.3 Criminal Code of Canada at Tab 2)*
(2) ***That both countries explore the use of remote testimony in criminal proceedings, by video-teleconferencing or similar means, to reduce costs; (p. 15)***	Continuing	Bill C-40 (Royal Assent June 17, 1999) amended the *Criminal Code* and the *Canada Evidence Act* to provide for the use of video-link testimony in criminal trials and extradition hearings. The use of video evidence is often necessary in telemarketing cases because there are may be a large number of victims in different locations. Video evidence eliminates the cost of travel for many victims, and makes available the testimony of those who are not able to travel. In telemarketing frauds, the victims are often elderly and may be reluctant or unable to travel. This is particularly significant in sentencing proceedings, where many witnesses may be required to establish the full extent of the fraud scheme and its impact on senior victims. Practical concerns about video evidence have been observed by Industry Canada (i.e. high costs). While the use of the new technology is viewed positively, protracted testimonies could greatly heighten the costs. For this reason, some people feel that it is better to transport victims to testify. There are also potential logistical problems about people showing up to testify and having to wait while a previous witness testifies (longer than expected). Point of Information: (1) Quebec recently reported that they were using videoconferencing in one of their trials; it was not reported whether this proved successful overall. (2) Ontario has begun to explore the use of remote testimony in criminal proceedings by video-teleconferencing in order to reduce costs. It is anticipated that this form of testimony will be employed in cross-border prosecutions in the year 2000.
(3) ***That the legal and technical potential and limits of electronic surveillance as a tool against telemarketing fraud be explored further; (p. 16)***	**In Process**	Through amendments made in Bill C-20, telemarketing fraud is now an offence for which electronic surveillance is possible. This allows judicially authorized interception, without consent of either party to the private communication in order to tackle the most serious cases involving deceptive telemarketing *(see Tab 4)*.

Synthesis Prepared by: Solicitor General Canada, Canadian Co-Chair, Binational Telemarketing Fraud Working Group
Date: June 6, 2000

(4)	***That both governments examine the regulation of telephone service providers and options for denying telephone services to telemarketing offenders; (p. 19)***	Continuing	Following the passage of Bill C-20, it is now possible to obtain orders concerning telephone service providers in order to deny service to a criminal telemarketer who has been convicted.
(5)	***That the scope of the existing mutual legal assistance arrangements be considered to determine whether they might be expanded to deal more effectively with telemarketing-fraud cases; (p. 20)***	Continuing	Bill C-40 (Royal Assent, June 17, 1999) amended the *Mutual Legal Assistance in Criminal Matters Act* by, inter alia, adding new sections 22.1, 22.2, 22.3, 22.4 and 23. These new sections provide that an order may be obtained from a Canadian judge (based on a foreign request) to compel a witness to attend at a place (which is properly equipped) and provide a statement by "means of technology that permits the virtual presence of the person in the territory over which the [foreign] state has jurisdiction…", i.e., by audio or video-link. These sections also provide sanctions in cases where the witness fails to appear or where he/she fails to remain at the place until his/her statement has been completed. The same judge's order may authorize the creation of a record of the statement (electronically, for example) and may compel the witness to bring with him "any record or thing in his or her possession or control". The Department of Justice's position is that the above-mentioned legislative changes require no corresponding amendments to the Canada-U.S. Treaty for mutual assistance in criminal matters. The above-mentioned amendments to the *Criminal Code* (s. 714.2) in combination with the Canada-U.S. Treaty on mutual assistance have the effect of providing a means for obtaining foreign "virtual" evidence which will be presumed to be admissible in Canadian proceedings. In principle, these changes would simplify the prosecution of telemarketing offences on both sides of the border. The *Criminal Code* (see s.131 (1.1)) and the *Canada Evidence Act* (see s. 46) have also been amended to provide for the use of video-link testimony in criminal trials and extradition hearings.
(6)	***That both governments clarify the circumstances under which mutual legal assistance requests are needed, by providing information and advice to the agencies involved; (p. 20)***	Continuing	New legislative tools made available to law enforcement in Canada have not been tested before the courts. Furthermore, training may be needed to use the new instruments as effectively as possible. Under the aegis of the Organization of American States (OAS), networks among central authorities are to be created the purpose of which is to make available throughout the hemisphere the requirements in order to obtain *MLAT* orders and extradition surrenders, as well as the identify of contact persons.
(7)	***That extradition arrangements be examined, and if possible modified, to facilitate and accelerate extradition in telemarketing fraud cases; (p. 21)***	Completed	Bill C-40 (Royal Assent, June 17, 1999) amended the *Extradition Act* to allow foreign prosecutors to submit a single certified "record of case" compiling evidence against the accused. Bill C-40, in amending the *Extradition Act*, also relaxed the evidentiary burden on the requesting jurisdiction in this respect by permitting the extradition judge to receive as evidence a certified "record of the case" in which the requesting

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		jurisdiction would have to attest to a summary of the available evidence against the person sought and certify that such evidence was available for trial and was sufficient to justify prosecution in that jurisdiction, or had at least been legally obtained according to the law of that jurisdiction. This should significantly reduce the workload and technical demands on U.S. prosecutors in telemarketing fraud cases, who previously had to obtain first-person non-hearsay affidavits from all of the victims and other witnesses. This was a particularly serious problem in telemarketing cases because of the large number of affidavits that had to be obtained from senior witnesses (see Tab 5). Prior to these amendments, Canada required, in extradition cases, "first person, non-hearsay affidavits" from the foreign witnesses. In other words, the witness could only report in his affidavit what he observed personally. This somewhat onerous requirement has been abolished. The above-mentioned amendments now only require that the foreign state summarize, in a document called the "record of the case" the evidence that is available in the foreign jurisdiction. The record of the case is usually prepared by the foreign prosecutor, who may now legally report second or third hand hearsay in this affidavit. It does not need to meet the usual requirements for evidence in a criminal case in Canada. The relevant Canadian provisions may prove controversial and at this point have already been constitutionally challenged in the courts by accused persons fighting their extradition. While the proposed evidentiary provisions appear to represent a significant departure from the past rules, the courts have recognized that the standards of fairness that apply to the extradition process are different from those required for domestic criminal proceedings. The *Criminal Code* and the *Canada Evidence Act* has also been amended to provide for the use of video-link testimony in criminal trials and extradition hearings.
(8) ***That federal deportation laws which might apply to foreign nationals engaging in telemarketing fraud be reviewed, and that enforcement agencies be given information about when deportation may be an option; (p. 21)***	**Outstanding**	Justice Canada officials (Immigration/Legal Services) acknowledge that there has been no action to date related to telemarketing and deportation; these cases are currently being treated like any other immigration issue. More specifically, a removal order shall not be executed where (*a*) the execution of the order would directly result in a contravention of any other order made by any judicial body or officer in Canada; or (*b*) the presence in Canada of the person against whom the order was made is required in any criminal proceedings and the Minister stays the execution of the order pending the completion of those proceedings. Some case law suggests that removal from Canada for the purpose of facing criminal charges should proceed under the *Extradition Act* and not under the *Immigration Act*.
(9) ***That research be conducted into offenders, victims and other aspects of telemarketing fraud to create effective educational materials and strategies to prevent it; (p. 21)***	**Continuing**	Findings from a national telemarketing fraud data needs assessment, commissioned by Solicitor General Canada in September, 1999, identified a clear need on the part of respondents for better data on victims, offenders, impacts, scam-based information, and case law. The study's objectives were to identify: (a) the type of information about telemarketing fraud that is currently maintained/available; (b) how that compares to the information required by practitioners in the field; and (c) any relevant information/data collection issues related to telemarketing fraud that emerged during the conduct of the study. The study's findings were presented at the September 27, 1999 meeting of the *National Telemarketing Fraud Strategy Group*, in Ottawa, followed by the dissemination of the final report to the same

		participants. The *Deceptive Telemarketing Prevention Forum* commissioned two research projects to study telemarketing fraud, its effects on victims, and other issues. All of this in support of a national social marketing campaign which was launched in May, 1999 in Montreal. The campaign included a video, pamphlets, posters, and public service announcements (both television and radio) which were disseminated across the country, including a number of community meetings with seniors. Recently, a McGill University professor interviewed Industry Canada officials in the Competition Bureau to develop profiles of telemarketing criminals, the responses of various enforcement agencies, the different types of scams, and those most vulnerable to victimization. This research corroborated existing research amassed by Industry Canada's Competition Bureau. Television programs have also provided the public with offender profiles. Ontario Ministry of Consumer and Commercial Relations (MCCR) officials have participated in the *Deceptive Telemarketing Prevention Forum* which produced an array of educational and consumer outreach materials. MCCR provides financial support to the OPP'S Phonebusters which also produces prevention materials. MCCR issues regularly scam scans and consumer beats to the media, warning consumers of potential scams. Generally, it is agreed that further research is required.
(10) ***That governments and agencies cooperate as closely as possible in developing, maintaining and disseminating educational materials, and in coordinating education and prevention efforts;*** *(p. 21)*	**Continuing**	The *Deceptive Telemarketing Prevention Forum* was set up in response to a clear need to find more effective ways to get prevention messages across to the general public. The Forum's activities have been national in scope. Many activities are taking place at the provincial level where a particular effort is needed to educate potential victims. The OPP's Seniorsbusters, a community outreach program involving seniors contacting other seniors who have been victimized through telemarketing fraud, continues its prevention efforts. Other prevention measures initiated in Canada are led by the RCMP, including seizures conducted at mailboxes, where investigating officers send back the money seized with the clear message that allowing money to be sent without better guarantees is risky. Saskatchewan Justice reports that brochures and other materials are disseminated through the province to provide unfiled information on how to deal with telemarketers.

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Date: June 6, 2000

(11)	***That strategies to control telemarketing fraud be coordinated between Canada and the United States at the agency, regional and national levels; (p. 25)***	**In Process**	Three interagency task forces have been established in Vancouver *(Project Emptor)*, Toronto *(Greater Toronto Area Fraudulent Telemarketing Consultative Committee)*, and Montreal *(Project Colt)*. Industry Canada officials, and others, regularly communicate with Federal Trade Commission officials in all jurisdictions and have offered to partner, wherever possible. A *National Telemarketing Fraud Prosecutors Group*, currently chaired by British Columbia, has been established following a *Federal Provincial Territorial Heads of Prosecution* meeting; information is shared on an informal basis. Following the most recent meeting of the *National Telemarketing Fraud Strategy Group (NTFSG)*, held in Toronto, May 26th, a decision was reached to form three sub-groups to more effectively address information dissemination and coordination issues: (1) Legislative/prosecutorial (co-chaired by Ontario Ministry of the Attorney General and the B.C. Attorney General's Department); (2) a central database repository (chaired by the Ontario Provincial Police); and (3) Policy (chaired by Solicitor General Canada). The three groups will report back to the larger group and provide a formal status report at the next meeting of the *NTFSG*.
(12)	***That an ongoing binational working group serve as an overall coordinator and deal with national and binational telemarketing fraud issues as they arise; (p. 28)***	**Continuing**	The *Binational Telemarketing Fraud Working Group* recently became a permanent body of the *Canada/U.S. Cross Border Crime Forum*. With respect to national coordination, *Project Emptor* (Vancouver), other RCMP, OPP, and other enforcement bodies are regular participants in the *National Telemarketing Fraud Strategy Group*. Following the report made to the Prime Minister of Canada and the President of the United States in 1997, annual meetings have taken place to report on progress and identify trends and emerging issues of mutual interest.
(13)	***That regional task-forces be encouraged to cooperate across the international border to the maximum extent possible; and (p. 28)***	**Continuing**	This is being undertaken wherever possible taking into account legal, logistical, technical and financial constraints. For example, *Project Emptor* (Vancouver) presently works with the Quebec Commercial Crime Section, RCMP "C" Division on a cross-border investigation. *Project Colt* (Montreal) has developed working relations between partners of projects on task forces. Ontario Ministry of Consumer and Commercial Relations' investigators have developed an excellent, informal working relationship with the U.S. Postal Authorities, the FBI, and Attorney General's offices in Ohio, Pennsylvania, Massachusetts, and New York, and other U.S. states. The *Greater Toronto Area Fraudulent Telemarketing Consultative Committee* and its strategic partners are all actively involved in cooperating across international borders.
(14)	***That, to further coordination, governments and agencies examine privacy and other laws relevant to cross-border shared access information systems with a view to expanding access to such systems to the maximum extent possible. (p. 29)***	**Outstanding**	Justice Canada officials advise that there are possibilities to exchange confidential information in some circumstances. For example, paragraph 8(2)(f) of the *Privacy Act* provides that personal information may be disclosed under an agreement or arrangement between the Government of Canada or an institution thereof and the government of a province; the government of a foreign state; for the purpose of administering or enforcing any law or carrying out a lawful investigation.

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		For example, the Canada/U.S. mutual legal assistance *(MLAT)* in criminal matters treaty mentions: 1. The parties shall provide, in accordance with the provisions of this Treaty , mutual legal assistance in all matters relating to the investigation, prosecution and suppression of offences. 2. Assistance shall include: ... (*f*) providing documents and records Paragraph 8(2)(b) of the *Privacy Act* provides that personal information may be disclosed for any purpose in accordance with any Act of Parliament or any regulation made thereunder that authorizes its disclosure. Section 29 of the *Competition Act* provides circumstances where personal information may be disclosed. Section 29 of the *Competition Act* reads: **29.** (1) No person who performs or has performed duties or functions in the administration or enforcement of this Act shall communicate or allow to be communicated to any other person except to a Canadian law enforcement agency or for the purposes of the administration or enforcement of this Act (*a*) the identity of any person from whom information was obtained pursuant to this Act; (*b*) any information obtained pursuant to section 11, 15, 16 or 114; (*c*) whether notice has been given or information supplied in respect of a particular proposed transaction under section 114; or (*d*) any information obtained from a person requesting a certificate under section 102. The position of Industry Canada's Competition Bureau is that it may communicate confidential information to a foreign law enforcement agency where the communication is necessary for the purposes of the administration or enforcement of the *Competition Act*. That is, where such disclosure would help the Bureau in receiving assistance or cooperation of that agency regarding a Canadian investigation.
Other Achievements:		
(1) **Competition Bureau, Industry Canada**: A number of searches have been conducted by the Competition Bureau of suspected fraudulent telemarketers. A couple of these have been prosecuted, including American Family Publishers and Nationwide Clearinghouse. Charges have		In November, 1998 a national consumer complaint database was created by Industry Canada and provincial and territorial governments (CANSHARE). The parties are presently exploring the means by which access to this database could be granted to other enforcement agencies, including the Federal Trade Commission.

been laid both at the individual and corporate level. Charges are currently outstanding in one case and Industry expects to lay charges in other cases in about 3 to 4 months. These cases have been selected through the volume of complaints or linked cases or go through different corporate names do analysis – based on information and in consultation with CANSHARE, Consumer Sentinel, National Fraud Information Centre (NFIC) (National Consumers League fax materials); they entail either a Canadian victim or Canadian perpetrator and deal with mail and some advance loan fee scams. (2) **Bill C-6 (Royal Assent, April 13, 2000)** ***Personal Information Protection and Electronic Documents Act*** introduced measures to protect personal information in the private sector, creating an electronic alternative for doing business with the federal government and clarifying how the courts would assess the reliability of electronic records used as evidence. As from today there was no federal legislation protecting personal information in the private sector. The federal *Privacy Act* provides such protection to the public sector only. Part I of Bill C-6 was designed to fill this gap. (The Province of Quebec is the only jurisdiction in Canada, and indeed in North America, to have enacted legislation applying to data protection in the private sector. Quebec's *Act Respecting the Protection of Personal Information in the Private Sector*, also known as Bill 68, came into force in 1994). The new legislation applies to organizations engaged in commercial activities when in relation to personal information that they collect, use or disclose. It has not been created bearing in mind telemarketing or any fraud, but allows for disclosure for law enforcement purposes. The oversight scheme, complaints to the Privacy Commissioner of Canada and review to the Federal Court allows, for damages and corrective measures.		

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(3) **RCMP "J" Division New Brunswick** undertook a reverse boiler room in Moncton on December 13, 1999 to educate the public on telemarketing fraud. Several partners were included and "J" Division intends to hold another reverse boiler room in the Fall, 2000.		
(4) **RCMP** "best practices" procedures (reports) are now being kept to record of procedures/prevention methods to deal with telemarketing crime or prevention. This slightly new procedure is intended to make information available to a wider range of law enforcement.		
(5) **Canada Post Corporation** just released Draft guidelines on provisions of Section 43 of the *Canada Post Corporation Act* conferring upon the Minister responsible for Canada Post Corporation, the power to stop the delivery of mail addressed by or to a person by issuance of a prohibitory order.		Prohibitory orders are issued in connection with allegedly illegal activity, ***including telemarketing fraud,*** cooperation from both the complainant and the authorities is essential in order to satisfy the Minister that his ministerial discretion should be exercised to issue a prohibitory order. The Minister, in his assessment of "reasonable grounds" for issuing the interim prohibitory order, considers the facts of the alleged illegal use of the mail and the potential consequences of issuing or not issuing an order. Depending upon the exigency of the circumstances and the sufficiency of the evidence, an interim prohibitory order can be issued in less than forty-eight (48) hours.
(6) **Visa Canada and MasterCard Canada** held an *International Deceptive Telemarketing Conference,* February 9-11, 2000, in Toronto.		The conference resulted in a six-point action plan that was distributed to conference participants.
(7) The **OPP-led Phonebusters,** a national partnership involving RCMP, Solicitor General Canada, Industry Canada, Canadian Bankers' Association, Visa Canada, Master Card Canada, and others, was established in 1992. As part of their prevention activities, Phonebusters has distributed over 3,500 videos across Canada and the U.S. to date, the largest proportion (over 70%) going to Ontario in keeping with the OPP's mandate for that province.		Over 800 Canadian elderly victims, and about 250 American elderly victims, have been contacted by Seniorsbusters since the program's inception in 1997. Recent statistics show that, of those elderly victims contacted, 58% of Canadians and 53% of Americans had received more telemarketing calls since their victimization. Seniorsbusters has been actively involved in presentations and displays with various seniors groups and symposia. As part of its future plans, the program hopes to make associations with several senior/retiree groups across Canada and the U.S. (i.e. Telephone Pioneers of America, the Municipal Retirees Organization of Ontario, Heritage Club, Federal Women's Institutes of Ontario, Crime Stoppers, and the ABC's of Fraud); this expansion of service will enable Seniorsbusters to educate a larger number of potential elderly victims.
(8) The **Seniorsbusters** program, a community outreach program based out of North Bay, Ontario, involving about 30-40 senior volunteers contacting seniors who have been victims of telemarketing fraud; this program		

was launched in October, 1997. (9) **"Strategic Alliance":** Toronto Police Service, Federal Trade Commission, Industry Canada, and Ontario Ministry of Consumer and Commercial Relations recently joined efforts to combat deceptive telemarketing. The participants have combined their resources and operate form a location at Toronto Police Service. (10) Alberta enacted a tough new consumer protection statute **"Fair Trading Act"** September 1,1999. The Act provides for stiff penalties on a vast array of consumer scams, frauds and misrepresentation. Alberta has already had occasion to use it against a deceptive loan broker operating in Calgary taking advantage of U.S. citizens. Another action against a "kit car" supplier in Calgary who uses the Internet to obtain sales in the U.S. for his product is in the works. He has made several sales into the U.S. and not provided a product. The sales involved several thousands of dollars. Action is being taken both under the *Criminal Code* and the *Fair Trading Act*. (11) **Alberta Government Services** department has begun discussions with the Federal Trade Commission's (FTC) Seattle office on ways how our Consumer Protection Field offices in Alberta can work more closely on issues of common concern. A face to face meeting is planned in the near future to identify potential opportunities for joint investigations/cooperation. (12) **Alberta's Minister responsible for Consumer Affairs,** along with her provincial and territorial counterparts, is preparing to sign a Memorandum of Understanding allowing access to the Canshare data base by other law enforcement agencies including the FTC. It is hoped this will occur in the very near future.		

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(13) In 1994, the **Province of Ontario enacted the** ***Loan Brokers Act*** expressly for the purpose of dealing with advance fee telemarketing schemes. Ontario Ministry of Consumer and Commercial Relations (MCCR) investigators have aggressively enforced this legislation, as well as the *Criminal Code* with respect to illegal telemarketers. To date, over 1,400 charges have been laid with a virtually 100% conviction rate. (14) Since October, 1999, as a result of surveillance activities by **MCCR investigators**, search warrants were executed which resulted in 12 arrests relative to two fraudulent telemarketing operations. Approximately 30 other operations in the Greater Toronto Area have been shut down because of intervention by the ***Greater Toronto Area Fraudulent Telemarketing Consultative Committee***.		

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Tab 1

52.1 (3) *Competition Act*

Deceptive telemarketing

(3) No person who engages in telemarketing shall

(*a*) make a representation that is false or misleading in a material respect;

(*b*) conduct or purport to conduct a contest, lottery or game of chance, skill or mixed chance and skill, where

(i) the delivery of a prize or other benefit to a participant in the contest, lottery or game is, or is represented to be, conditional on the prior payment of any amount by the participant, or

(ii) adequate and fair disclosure is not made of the number and approximate value of the prizes, of the area or areas to which they relate and of any fact within the person's knowledge, that affects materially the chances of winning;

(*c*) offer a product at no cost, or at a price less than the fair market value of the product, in consideration of the supply or use of another product, unless fair, reasonable and timely disclosure is made of the fair market value of the first product and of any restrictions, terms or conditions applicable to its supply to the purchaser; or

(*d*) offer a product for sale at a price grossly in excess of its fair market value, where delivery of the product is, or is represented to be, conditional on prior payment by the purchaser.

Télémarketing trompeur

(3) Nul ne peut, par télémarketing :

a) donner des indications qui sont fausses ou trompeuses sur un point important;

b) tenir ou prétendre tenir un concours, une loterie, un jeu de hasard ou un jeu d'adresse ou un jeu où se mêlent le hasard et l'adresse, si :

(i) la remise d'un prix ou d'un autre avantage au participant au concours, à la loterie ou au jeu est conditionnelle au paiement préalable d'une somme d'argent par celui-ci, ou est présentée comme telle,

(ii) le nombre et la valeur approximative des prix, les régions auxquelles ils s'appliquent et tout fait connu de la personne pratiquant le télémarketing modifiant d'une façon importante les chances de gain ne sont pas convenablement et loyalement divulgués;

c) offrir un produit sans frais, ou à un prix inférieur à sa juste valeur marchande, en contrepartie de la fourniture ou de l'utilisation d'un autre produit, si la juste valeur marchande du premier produit et les restrictions, modalités ou conditions de la fourniture de ce produit ne sont pas divulguées à l'acquéreur d'une manière juste, raisonnable et opportune;

d) offrir un produit en vente à un prix largement supérieur à sa juste valeur marchande, si la livraison du produit est conditionnelle au paiement préalable du prix par l'acquéreur, ou est présentée comme telle.

Tab 2

462.3 *C.C.*

enterprise crime offence" means

(*b*.1) an offence against section 126.1 or 126.2 or subsection 233(1) or 240(1) of the *Excise Act*, section 153, 159, 163.1 or 163.2 of the *Customs Act* or subsection 52.1(9) of the *Competition Act*, or

«infraction de criminalité organisée» "*enterprise crime offence*"

b.1) une infraction visée aux articles 126.1 ou 126.2 ou aux paragraphes 233(1) ou 240(1) de la *Loi sur l'accise*, aux articles 153, 159, 163.1 ou 163.2 de la *Loi sur les douanes* ou au paragraphe 52.1(9) de la *Loi sur la concurrence*;

NOTE: The balance of probabilities as requested in ss. 462.37 (1) C.C. should it leave to forfeiture necessitate to make a probable relation between for example the money found often in a boiler room and the proceeds of crime.

Special search warrant

462.32 (1) Subject to subsection (3), where a judge, on application of the Attorney General, is satisfied by information on oath in Form 1 that there are reasonable grounds to believe that there is in any building, receptacle or place, within the province in which the judge has jurisdiction or any other province, any property in respect of which an order of forfeiture may be made under subsection 462.37(1) or 462.38(2), in respect of an enterprise crime offence alleged to have been committed within the province in which the judge has jurisdiction, the judge may issue a warrant authorizing a person named therein or a peace officer to search the building, receptacle or place for that property and to seize that property and any other property in respect of which that person or peace officer believes, on reasonable grounds, that an order of forfeiture may be made under that subsection.

Order of forfeiture of property on conviction

462.37 (1) Subject to this section and sections 462.39 to 462.41, where an offender is convicted, or discharged under section 730, of an enterprise crime offence and the court imposing sentence on the offender, on application of the Attorney General, is satisfied, on a balance of probabilities, that any property is proceeds of crime and that the enterprise crime offence was committed in relation to that property, the court shall order that the property be forfeited to Her Majesty to be disposed of as the Attorney General directs or otherwise dealt with in accordance with the law.

Mandat spécial

462.32 (1) Sous réserve du paragraphe (3), le juge qui est convaincu, à la lumière des renseignements qui, à la demande du procureur général, lui sont présentés sous serment selon la formule 1, qu'il existe des motifs raisonnables de croire que des biens pourraient faire l'objet d'une ordonnance de confiscation en vertu du paragraphe 462.37(1) ou 462.38(2) parce qu'ils sont liés à une infraction de criminalité organisée qui aurait été commise dans la province où il est compétent et qu'ils se trouvent dans un bâtiment, contenant ou lieu situé dans cette province ou dans une autre province peut décerner un mandat autorisant la personne qui y est nommée ou un agent de la paix à perquisitionner dans ce bâtiment, contenant ou lieu et à saisir les biens en question ainsi que tout autre bien dont cette personne ou l'agent de la paix a des motifs raisonnables de croire qu'il pourrait faire l'objet d'une telle ordonnance.

Confiscation lors de la déclaration de culpabilité

462.37 (1) Sur demande du procureur général, le tribunal qui détermine la peine à infliger à un accusé coupable d'une infraction de criminalité organisée — ou absous en vertu de l'article 730 à l'égard de cette infraction — est tenu, sous réserve des autres dispositions du présent article et des articles 462.39 à 462.41, d'ordonner la confiscation au profit de Sa Majesté des biens dont il est convaincu, selon la prépondérance des probabilités, qu'ils constituent des produits de la criminalité obtenus en rapport avec cette infraction de criminalité organisée; l'ordonnance prévoit qu'il est disposé de ces biens selon les instructions du procureur général ou autrement en conformité avec la loi.

Tab 3

354

Canada Evidence Act

Order for examination of witness in Canada

46. (1) If, on an application for that purpose, it is made to appear to any court or judge that any court or tribunal outside Canada, before which any civil, commercial or criminal matter is pending, is desirous of obtaining the testimony in relation to that matter of a party or witness within the jurisdiction of the first mentioned court, of the court to which the judge belongs or of the judge, the court or judge may, in its or their discretion, order the examination on oath on interrogatories, or otherwise, before any person or persons named in the order, of that party or witness accordingly, and by the same or any subsequent order may command the attendance of that party or witness for the purpose of being examined, and for the production of any writings or other documents mentioned in the order and of any other writings or documents relating to the matter in question that are in the possession or power of that party or witness.

Ordre d'interroger un témoin au Canada

46. (1) Lorsque, sur requête à cette fin, il est prouvé à un tribunal ou à un juge qu'un tribunal étranger compétent, devant lequel est pendante une affaire civile, commerciale ou pénale, désire avoir, dans cette affaire, le témoignage de quelque partie ou témoin qui est dans le ressort du tribunal en premier lieu mentionné, ou du tribunal auquel appartient le juge, ou de ce juge, ce tribunal ou ce juge peut, à discrétion, ordonner en conséquence que la partie ou le témoin soit interrogé sous serment, par questions écrites ou autrement, devant la ou les personnes dénommées à l'ordonnance, et peut assigner, par la même ordonnance ou par une ordonnance subséquente, cette partie ou ce témoin à comparaître pour témoigner, et lui enjoindre de produire tous écrits ou documents mentionnés dans l'ordonnance, et tous autres écrits ou documents relatifs à l'affaire dont il s'agit et qui sont en la possession ou sous le contrôle de la partie ou du témoin.

Video links, etc.

(2) For greater certainty, testimony for the purposes of subsection (1) may be given by means of technology that permits the virtual presence of the party or witness before the court or tribunal outside Canada or that permits that court or tribunal, and the parties, to hear and examine the party or witness

Témoin virtuel

(2) Il est entendu que le témoignage de la personne fait au moyen d'un instrument qui retransmet, devant tout tribunal étranger compétent, sur le vif, son image et sa voix - ou celle-ci seulement - et qui permet de l'interroger est admissible au titre du paragraphe (1).

Laws about witnesses to apply – video links etc.

50 (1.1) Despite subsection (1), when a party or witness gives evidence under subsection 46(2), the evidence shall be given as though they were physically before the court or tribunal outside Canada, for the purposes of the laws relating to evidence and procedure but only to the extent that giving the evidence would not disclose information otherwise protected by the Canadian law of non-disclosure of information or privilege.

Contempt of court in Canada

(1.2) When a party or witness gives evidence under subsection 46(2), the Canadian law relating to contempt of court applies with respect to a refusal by the party or witness to answer a question or

Droit étranger et renseignements protégés

50 (1.1) Malgré le paragraphe (1), la personne qui dépose conformément au paragraphe 46(2) le fait, pour l'application du droit de la preuve et de la procédure, comme si elle se trouvait dans le ressort étranger en question, mais seulement dans la mesure où son témoignage ne révèle pas de renseignements protégés par le droit canadien relatif à la non-divulgation de renseignements ou à l'existence de priviléges.

(1.2) Le droit canadien en matière d'outrage au tribunal s'applique à la

to produce a writing or document referred to in subsection 46(1), as ordered under that subsection by the court or judge.

personne qui, déposant conformément au paragraphe 46(2), refuse de répondre à une question ou de produire les écrits ou documents visés par l'ordonnance du tribunal ou du juge canadien.

Criminal Code

Section 131 of the *Criminal Code* has been amended by adding the following:

Perjury
131. (1) Subject to subsection (3), every one commits perjury who, with intent to mislead, makes before a person who is authorized by law to permit it to be made before him a false statement under oath or solemn affirmation, by affidavit, solemn declaration or deposition or orally, knowing that the statement is false.

Parjure
131. (1) Sous réserve du paragraphe (3), commet un parjure quiconque fait, avec l'intention de tromper, une fausse déclaration après avoir prêté serment ou fait une affirmation solennelle, dans un affidavit, une déclaration solennelle, un témoignage écrit ou verbal devant une personne autorisée par la loi à permettre que cette déclaration soit faite devant elle, en sachant que sa déclaration est fausse.

Video links, etc.

(1.1) Subject to subsection (3), every person who gives evidence under subsection 46(2) of the *Canada Evidence Act*, or gives evidence or a statement pursuant to an order made under section 22.2 of the *Mutual Legal Assistance in Criminal Matters Act*, commits perjury who, with intent to mislead, makes a false statement knowing that it is false, whether or not the false statement was made under oath or solemn affirmation in accordance with subsection (1), so long as the false statement was made in accordance with any formalities required by the law of the place outside Canada in which the person is virtually present or heard...

Fabrication de preuve

(1.1) Sous réserve du paragraphe (3), commet un parjure la personne visée au paragraphe 46(2) de la *Loi sur la preuve au Canada* ou à l'article 22.2 de la *Loi sur l'entraide juridique en matière criminelle* qui fait, avec l'intention de tromper, une fausse déclaration, la sachant fausse, qu'elle ait été faite ou non en conformité avec le paragraphe (1), pour autant qu'elle ait été faite en conformité avec les formalités prescrites par le droit en vigueur dans le ressort étranger...

Section 136 of the *Criminal Code* has been modified by adding the following:

Evidence in specific cases

136 (1.1) Evidence given under section 714.1, 714.2, 714.3 or 714.4 or under subsection 46(2) of the *Canada Evidence Act* or evidence or a statement given pursuant to an order made under section 22.2 of the *Mutual Legal Assistance in Criminal Matters Act* is deemed to be evidence given by a witness in a judicial proceeding for the purposes of subsection (1).

Video links, etc. - witness in Canada

714.1 A court may order that a witness in Canada give evidence by means of technology that permits the witness to testify elsewhere in Canada in the virtual presence of the parties and the court, if the court is of the opinion that it would be appropriate in all the circumstances, including

(*a*) the location and personal circumstances of the witness;

(*b*) the costs that would be incurred if the witness had to be physically present; and

(*c*) the nature of the witness' anticipated evidence

Video links, etc. - witness outside Canada

714.2 (1) A court shall receive evidence given by a witness outside Canada by means of technology that permits the witness to testify in the virtual presence of the parties and the court unless one of the parties satisfies the court that the reception of such testimony would be contrary to the principles of fundamental justice.

Dépositions à distance

136 (1.1) Les dépositions faites dans le cadre des articles 714.1 à 714.4, du paragraphe 46(2) de la *Loi sur la preuve au Canada* ou de l'article 22.2 de la *Loi sur l'entraide juridique en matière criminelle* sont, pour l'application du présent article, réputées être faites dans une procédure judiciaire.

Témoin au Canada

714.1 Le tribunal peut, s'il l'estime indiqué dans les circonstances - compte tenu du lieu où se trouve le témoin, de sa situation personnelle, des coûts que sa présence impliquerait et de la nature de sa déposition - ordonner au témoin qui se trouve au Canada de déposer au moyen d'un instrument qui retransmet sur le vif, ailleurs au Canada, au juge et aux parties, son image et sa voix et qui permet de l'interroger.

Témoins à l'étranger

714.2 (1) À moins qu'une partie n'établisse à la satisfaction du tribunal que ce serait contraire aux principes de justice fondamentale, le tribunal reçoit la déposition de la personne qui se trouve à l'étranger faite au moyen d'un instrument qui retransmet sur le vif, au Canada, au juge et aux parties, son image et sa voix et qui permet de l'interroger.

Tab 4

Criminal Code

Judge to be satisfied

186. (1) An authorization under this section may be given if the judge to whom the application is made is satisfied

(*a*) that it would be in the best interests of the administration of justice to do so; and

(*b*) that other investigative procedures have been tried and have failed, other investigative procedures are unlikely to succeed or the urgency of the matter is such that it would be impractical to carry out the investigation of the offence using only other investigative procedures

Opinion du juge

186. (1) Une autorisation visée au présent article peut être donnée si le juge - auquel la demande est présentée est convaincu que :

a) d'une part, l'octroi de cette autorisation servirait au mieux l'administration de la justice;

b) d'autre part, d'autres méthodes d'enquête ont été essayées et ont échoué, ou ont peu de chance de succès, ou que l'urgence de l'affaire est telle qu'il ne serait pas pratique de mener l'enquête relative à l'infraction en n'utilisant que les autres méthodes d'enquête

NOTE: Before the amendments investigators could do wiretapping if one of the parties to the communication consent (184.2 (3 a).) The interception by the State with the consent of one of the parties to the communication without an authorization violates the Charter (R. v. Duarte , [1990]1 S.C.R., 30)

Interception with consent

184.2 (1) A person may intercept, by means of any electro-magnetic, acoustic, mechanical or other device, a private communication where either the originator of the private communication or the person intended by the originator to receive it has consented to the interception and an authorization has been obtained pursuant to subsection (3).

(2) An application for an authorization under this section shall be made by a peace officer, or a public officer who has been appointed or designated to administer or enforce any federal or provincial law and whose duties include the enforcement of this or any other Act of Parliament, *ex parte* and in writing to a provincial court judge, a judge of a superior court of criminal jurisdiction or a judge as defined in section 552, and shall be accompanied by an affidavit, which may be sworn on the information and belief of that peace officer or public officer or of any other peace officer or public officer, deposing to the following matters: (*a*) that there are reasonable grounds to believe that an offence against this or any other Act of Parliament has been or will be committed;

(*b*) the particulars of the offence;

(*c*) the name of the person who has consented to the interception;

(*d*) the period for which the authorization is requested; and

(*e*) in the case of an application for an authorization where an authorization has previously been granted under this section or section 186, the particulars of the authorization.

Interception avec consentement

184.2 (1) Toute personne peut, au moyen d'un dispositif électromagnétique, acoustique, mécanique ou autre, intercepter une communication privée si l'auteur de la communication ou la personne à laquelle il la destine a consenti à l'interception et si une autorisation a été obtenue conformément au paragraphe (3).

(2) La demande d'autorisation est présentée, *ex parte* et par écrit, à un juge de la cour provinciale, à un juge de la cour supérieure de juridiction criminelle ou à un juge au sens de l'article 552 soit par l'agent de la paix, soit par le fonctionnaire public nommé ou désigné pour l'application ou l'exécution d'une loi fédérale ou provinciale et chargé notamment de faire observer la présente loi ou toute autre loi fédérale; il doit y être joint un affidavit de cet agent ou de ce fonctionnaire, ou de tout autre agent de la paix ou fonctionnaire public, pouvant être fait sur la foi de renseignements tenus pour véridiques et indiquant ce qui suit :

a) le fait qu'il existe des motifs raisonnables de croire qu'une infraction à la présente loi ou à toute autre loi fédérale a été ou sera commise;

b) les détails relatifs à l'infraction;

c) le nom de la personne qui a consenti à l'interception;

(3) An authorization may be given under this section if the judge to whom the application is made is satisfied that
(*a*) there are reasonable grounds to believe that an offence against this or **any other Act of Parliament** has been or will be committed;
(*b*) either the originator of the private communication or the person intended by the originator to receive it has consented to the interception; and
(*c*) there are reasonable grounds to believe that information concerning the offence referred to in paragraph (*a*) will be obtained through the interception sought.

d) la période pour laquelle l'autorisation est demandée;
e) dans le cas où une autorisation a déjà été accordée conformément au présent article ou à l'article 186, les modalités de cette autorisation.

(3) L'autorisation peut être donnée si le juge est convaincu :

a) qu'il existe des motifs raisonnables de croire qu'une infraction à la présente loi ou **à toute autre loi fédérale a été ou sera commise;**
b) que l'auteur de la communication privée ou la personne à laquelle il la destine a consenti à l'interception;

c) qu'il existe des motifs raisonnables de croire que des renseignements relatifs à l'infraction seront obtenus grâce à l'interception.

EXTRADITION ACT

Tab 5

Evidence **32.** (1) Subject to subsection (2), evidence that would otherwise be admissible under Canadian law shall be admitted as evidence at an extradition hearing. The following shall also be admitted as evidence, even if it would not otherwise be admissible under Canadian law:

(*a*) the contents of the documents contained in the record of the case certified under subsection 33(3);

(*b*) the contents of the documents that are submitted in conformity with the terms of an extradition agreement; and

(*c*) evidence adduced by the person sought for extradition that is relevant to the tests set out in subsection 29(1) if the judge considers it reliable.

Exception - Canadian evidence

(2) Evidence gathered in Canada must satisfy the rules of evidence under Canadian law in order to be admitted.

Record of the case

33. (1) The record of the case must include

(*a*) in the case of a person sought for the purpose of prosecution, a document summarizing the evidence available to the extradition partner for use in the prosecution; and

(*b*) in the case of a person sought for the imposition or enforcement of a sentence,

(i) a copy of the document that records the conviction of the person, and

(ii) a document describing the conduct for which the person was convicted.

Other documents — record of the case

(2) A record of the case may include other relevant documents, including documents respecting the identification of the person sought for extradition.

Certification of record of the case

(3) A record of the case may not be admitted unless

(*a*) in the case of a person sought for the purpose of prosecution, a judicial or prosecuting authority of the extradition partner certifies that the evidence summarized or contained in the record of the case is available for trial and

(i) is sufficient under the law of the extradition partner to justify prosecution, or

Règle générale **32.** (1) Sont admis comme faisant preuve au cours de l'audition de la demande, sous réserve du paragraphe (2), les éléments de preuve admissibles en vertu du droit canadien ainsi que les éléments de preuve suivants même si le droit canadien ne prévoit pas par ailleurs leur admissibilité :

a) le contenu des documents qui font partie du dossier d'extradition certifié en conformité avec le paragraphe 33(3);

b) le contenu des documents présentés en conformité avec un accord;

c) les éléments de preuve présentés par l'intéressé qui sont pertinents pour l'application du paragraphe 29(1) et que le juge estime dignes de foi.

Éléments de preuve canadiens

(2) Les éléments de preuve obtenus au Canada sont admis en conformité avec le droit canadien.

Dossier d'extradition

33. (1) Le dossier d'extradition comporte obligatoirement :

a) dans le cas d'une extradition en vue d'un procès, un résumé des éléments de preuve dont dispose le partenaire aux fins de poursuite;

b) dans le cas d'une extradition en vue d'infliger une peine à l'intéressé ou de la lui faire purger, les éléments suivants :

(i) une copie de la déclaration de culpabilité,

(ii) la description des actes qui ont donné lieu à la déclaration de culpabilité.

Éléments facultatifs

(2) Le dossier peut aussi comprendre des documents établissant l'identité de l'intéressé et tout autre document pertinent.

Certification

(3) Le dossier n'est admissible en preuve que si :

a) dans le cas d'une extradition en vue d'un procès, une autorité judiciaire ou un poursuivant du partenaire certifie, d'une part, que les éléments de preuve

(ii) was gathered according to the law of the extradition partner; or

(*b*) in the case of a person sought for the imposition or enforcement of a sentence, a judicial, prosecuting or correctional authority of the extradition partner certifies that the documents in the record of the case are accurate.

résumés au dossier ou contenus dans celui-ci sont disponibles pour le procès et, d'autre part, soit que la preuve est suffisante pour justifier la poursuite en vertu du droit du partenaire, soit qu'elle a été recueillie conformément à ce droit;

b) dans le cas d'une extradition en vue d'infliger une peine à l'intéressé ou de la lui faire purger, l'autorité judiciaire, un fonctionnaire du système correctionnel ou un poursuivant du partenaire certifie que les documents au dossier sont exacts.

Senate Permanent Subcommittee
On Investigations
EXHIBIT #____17____

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Republican Staff Background Memorandum

"Cross-Border Fraud: Scams Know No Boundaries"
and
"Cross-Border Fraud: Improving Transnational Law Enforcement"

Senate Dirksen Office Building
Room 342
9:30 a.m.

Thursday, 14th June, 2001
and
Friday, 15th June, 2001

☆☆☆

This memorandum collects and summarizes some important background information that may help you and your Members prepare for our hearing on Thursday and Friday on cross-border fraud issues.

I. *Introduction*

These hearings will discuss current issues in cross-border law enforcement coordination in the fight against cross-border telemarketing and direct-mail fraud, and will place a particular emphasis upon the impact such crimes have upon U.S. senior citizens who are victimized by perpetrators residing in Canada.

There is no doubt that telemarketing fraud is a huge problem in the U.S. and Canada, and that cross-border telemarketing fraud is a growing problem. According to a joint U.S.-Canadian report published in 1997, total telemarketing sales in the U.S. and Canada amounted to $400 billion per year, with telemarketing fraud accounting, astonishingly, for perhaps even "as much as 10% of the total volume of telemarketing." A growing proportion of this total telemarketing fraud is apparently cross-border fraud. A report from the Ministry of Attorney General in the Canadian province of

British Columbia has also described a "growing trend toward telemarketers using one country as an operations base, but targeting primarily citizens of another country."

II. *PSI's Investigation*

This memorandum uses the term "cross-border fraud" to describe frauds involving a perpetrator residing in one country who defrauds at least one victim residing in another. In this investigation undertaken by PSI's Republican staff, we focused in particular upon fraud schemes carried out by Canadian perpetrators against United States senior citizens – a demographic group of unusual vulnerability to these and other such deceptive schemes.

A. *Widespread Nature of Cross-Border Fraud*

There is no solid information available on the total impact of all varieties of cross-border fraud, but representatives from several U.S. state AG offices have guessed that it might conceivably be as high as $500 million a year.[1] No more specific information is available, however, because many victims are often reluctant to report that they have been victimized, and sometimes have difficulty remembering exactly who contacted them or exactly how much they sent to the con artists. (These problems are particularly acute with regard to senior citizen victims.)

"Phonebusters," a Canadian law enforcement project that runs a telephone fraud hotline, has advised us that in the year 2000 they received information on over 4,000 U.S. victims, $14 million in fraud losses, and over 7,000 telephone calls.[2] (Worse still, available information suggests that such reported problems are only the tip of the iceberg: the National Association of Attorney Generals (NAAG) estimates that only about 10 percent of the fraud in the United States is ever reported to any law enforcement authority.)

There are several reasons why such fraud appears to be so widespread. To begin with, the United States sadly has a large population of potential victims – the elderly – who are reportedly specifically targeted by cross-border criminals. According to British Columbia law enforcement authorities, for example, Canadian lottery resellers have long "targeted elderly American citizens, taking advantage of the older generation's blind trust in a person's honesty." A 1997 U.S.-Canada Working Group on telemarketing fraud concluded similarly that

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1 Western Union wire transfers, for example, are but one means by which fraud victims are induced to send money abroad. Western Union officials have advised us that they received 888 complaints of fraud last year involving apparent losses totaling $1,839,159.

2 These figures were provided by Inspector Barry Elliott of Phonebusters in Ontario, Canada. The Phonebusters hotline shares information with law enforcement on both sides of the border.

> "[t]elemarketing criminals frequently prey upon senior citizens, although other age groups have been victims. * * * Senior citizens in both countries are over-represented among victims, and offenders have admitted to targeting them specifically."

Indeed, a 1996 survey by the American Association of Retired Persons (AARP) found that while only 36 percent of the adult U.S. population at that time was age 50 or older, fully 56 percent of telemarketing victims were of that age. The U.S. state Attorney General offices with which we have spoken indicate that they feel that these figures may be even higher today.

The senior citizens who disproportionately end up being victims of cross-border fraud tend to be trusting, acculturated to a "Prize Patrol" culture of "you could be a winner" promotions, easily reached by both mail and telephone service and more likely than other groups actually to be at home to receive calls. They also often possess considerable sums of disposable cash (*e.g.*, savings accounts),[3] and in some cases may be somewhat cognitively impaired (*e.g.*, with Alzheimer's disease or ordinary senility). As PSI demonstrated in its deceptive mailings/sweepstakes hearings, this potential victim population can be an irresistible target even for comparatively reputable American companies – let alone domestic criminals. Unfortunately, foreign criminals haven't overlooked this demographic either: American seniors are apparently tempting marks for foreign English-speaking telemarketing con artists as well.

(Unfortunately, it is also, in some respects, harder to prosecute fraud crimes against senior citizens than against other groups. Elderly victims may find it more difficult to travel long distances – *e.g.*, to Canada – to testify at a trial or extradition proceeding, and their often advanced age makes them somewhat more likely than other victims to die before offenders are convicted or damage lawsuits are brought to a conclusion.)

Second, the U.S.-Canada border – in physical terms, the longest unguarded frontier in the world – is, to a great extent, culturally, linguistically, telephonically, and postally almost completely invisible to fraud perpetrators and victims alike. It is very easy for Canadians to send bulk mailings of sweepstakes letters for distribution in the U.S., and Canada has the same basic "area code plus number" telephone dialing system as the United States. Moreover, most Canadians speak English as their first language, and with an accent largely indistinguishable from that of millions of Americans.

According to Canadian authorities with whom we have spoken, Canadian criminals involved in cross-border fraud tend to be divided into several distinct communities. Advance fee fraud rings,

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[3] Individuals over 55 years of age are reported to own more than half of all the financial assets in this country. Especially to the extent that these savings exist simply in the form of savings accounts – a simple and very traditional form of asset-holding that may be very appealing to seniors – such assets are often highly liquid and can easily be converted into large sums of cash.

for some reason, tend to cluster in Toronto, while Montreal is the city best known for sweepstakes fraud, and Vancouver is a center for telemarketing fraud.

Third, though this is less obvious to most Americans, Canadian laws in some respects restrict cross-border cooperation against fraud by making it both more difficult for law enforcement authorities to obtain records and easier for perpetrators to contest extradition proceedings. (This will be explained in more detail hereinafter.)

B. *Victims of Cross-Border Fraud*

Both foreign and domestic fraudulent telemarketers utilize high-pressure sales methods ranging from ploys to gain sympathy to harassment and even to threats. AARP's research indicates that telemarketing fraud victims cannot easily recognize a fraudulent phone pitch – and that even if they do they are often too polite to simply hang up the telephone, thus allowing callers to subject them to further blandishments. Once fraud has occurred, moreover, its victims are often very reluctant to report it, afraid of being perceived as stupid or gullible. These dynamics are particularly acute for senior citizens, who may also fear that if they report having been defrauded, their family will conclude that they have become incompetent and are no longer able to handle their own finances.[4]

The cross-border fraud victims with whom we have spoken share a number of characteristics. Almost all had suffered some traumatic experience in their lives approximately six months before they fell prey to a scam. This traumatic experience might be a personal illness, sudden financial crisis, debilitating illness, commitment to a nursing home, or death of a loved one (*e.g.*, a spouse) – problems to which elderly persons may be particularly vulnerable. In each case, this experience helped place pressures upon them that apparently helped erode their sense of caution or incredulity in dealing with smooth-talking con artists who purported to offer them a way to solve their problems or help provide for their or their family's needs. (Moreover, as one of our victim-witnesses noted, even absent some specific trauma, the elderly – who often find it difficult to earn additional income through full-time employment – sometimes simply begin to fear that "their money will not last as long as they will."[5])

One interesting tendency we observed among the victims with whom we have spoken is that – presumably because of their advanced age – they tend to be interested in the money less for self-interested reasons (*e.g.*, simple greed) than for "noble" or "altruistic" ones (*e.g.*, to help provide for their family's welfare after they die, or to help cover the costs of medical care for a spouse or other relative). In one case reported by the AARP, for example, the "pitcher" encouraged the victim to pay fees in order to claim the proffered prize as a way of ensuring the family's welfare so that the

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4 *See* AARP, *Don't Fall for a Telephone Line* [videotape].

5 This was recounted by Ann Hersom of Acton, Maine.

victim could "then see Jesus with a clear conscience."[6] One senior citizen victim we interviewed similarly had advised that his wife had hoped to win a prize in order to bestow it upon her favorite charity.

All in all, elderly Americans are often particularly easy targets for con artists. Today's older senior citizens have been described as part of the so-called "Great Generation." They are, in other words, the products of a simpler, more polite, and perhaps more trusting time in which – as Investigator David Kessler of the Ohio Attorney General's office described it – one's word or a handshake was felt to be as good as any contract. In this characterization, which we believe contains much truth, senior citizens tend to be much more willing to believe a well-prepared fraud "pitch," and are often unwilling to simply terminate telephone calls with suspicious individuals for fear of being thought rude. (For the elderly who live alone and may feel lonely, the seeming companionship of a friendly caller – especially a persistent, repeat caller – may also provide a special allure, and impart an unwarranted credibility.)

More, perhaps, than other demographic groups, for example, members of this "Greatest Generation" may tend to believe the "nice young man" who telephones them and claims to be calling from the Canadian lottery commission to announce that they have "won a million dollars" which can be delivered promptly if only they provide thousands of dollars in up-front Canadian "income taxes" or "duty taxes." They may similarly tend to believe the caller claiming to be a Canadian law enforcement officer, or a lawyer from a law firm, seeking to refund money previously lost in a scam, also only in return for the payment of certain up-front "fees." Especially when combined with high-pressure techniques – *e.g.*, telling the victims that they must respond in a very short period of time or else forfeit their prize – such overtures apparently frequently elicit dangerous degrees of trust.

C. *Investigatory Steps Undertaken*

This understanding of the nature and victims of cross-border fraud provides an important context for our hearing focusing both upon the impact of such crimes and upon the opportunities and challenges facing law-enforcement officials in the United States and Canada whose responsibility it is to fight cross-border con artists. To develop a broad perspective upon the cross-border fraud issue, we have, during the course of our investigation, conducted a number of steps, including:

- obtaining and listening to telephone recordings of real-life Canadian con artist "pitcher" conversations with victims – including victim-witness Bruce Hathaway of Ohio and his daughter Ann;

- obtaining documents pursuant to subpoena detailing various victims' wire transfers to Canadian perpetrators;

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[6] *See* AARP, *Don't Fall For a Telephone Line*, *supra*.

- obtaining personal records from and conducting personal interviews of several victims of cross-border fraud;
- interviewing a convicted cross-border criminal now serving time in a U.S. federal penitentiary; and
- interviewing numerous U.S. and Canadian law enforcement officials at the federal, state/provincial, and local/municipal level in both countries.

The following pages describe the understanding of this issue we have acquired through these various investigatory steps.

III. *Practices of Cross-Border Fraud Telemarketers*

As suggested by the elaborate not-quite-hypothetical example of cross-border fraud described in Senator Collins' recent "Weekly Column" in the *Star Herald* of Aroostook County, the "lottery scam" is a particularly common variety of cross-border fraud. Lottery scams are also the type of fraud upon which we have focused much of our investigation. As Senator Collins described that case,

> "One day, you receive information in the mail encouraging you to enter a Canadian lottery. Since you have no way of knowing that U.S. law makes it illegal to sell foreign lottery tickets in this country, you assume they're legitimate, risk a few dollars, pick your lucky number, buy a ticket – and hope for the best.
>
> "Some weeks later, you receive a telephone call from a distinguished-sounding gentleman, who identifies himself as an official from the Canadian Lottery Board: today is your lucky day, and you've won millions of dollars. All you need to do now is pay Canadian taxes on your new windfall, he tells you, and the money is yours. You happily send several thousand dollars to the official-sounding Canadian address he gives you. You've won only Canadian dollars, of course, but your prayers have been answered and you're rich beyond your dreams. Or maybe not.
>
> "Not long after that, another man calls you. He identifies himself as an inspector from the Ontario Provincial Police (OPP) anti-fraud squad, and he tells you that you've been swindled. There was no lottery, it appears, and you actually sent your money to a group of crooks operating out of a 'boiler room' fraud operation in Toronto. Fortunately, he says, you're in luck, because the OPP just raided the

> criminal's base of operations and recovered bank records leading authorities to the criminals' ill-gotten gains. The OPP, you are told to your great relief, has recovered your money. All you have to do *now* is pay a 'recovery fee' – and a small cross-border excise tax you really should have paid when sending the money to Canada in the first place – by sending a bit more money to the OPP post office box in Toronto that he provides. (By the way, your caller adds, this police operation was conducted as part of a joint U.S.-Canadian fraud task force, and you now fall under an FBI 'gag order' designed to protect the secrecy of ongoing undercover operations. As a result, you may not discuss your situation with friends or family until further notice.) Simply grateful at the prospect of having been saved from a costly fraud, you agree.
>
> "Well, you've been had, all right. But not in the way you might think. All of your callers were criminals. There was no lottery, no winning lucky number, no taxes, no OPP raid, no 'recovery fee' or 'excise tax,' and no 'gag order.' Your callers were indeed all calling from Canada, but that's the only thing about which they were truthful. In short, you are now a twofold victim of cross-border fraud."[7]

As the column notes, just such a scheme was reportedly run out of Toronto by a man named Denis Morin – who may have used such scams to defraud U.S. citizens of hundreds of thousands of dollars *every month* for as long as five years. Because of its use of the second "OPP" call – a practice known as "reloading" – Morin's scheme was more elaborate than some frauds, but was apparently by no means all that unusual. Law enforcement officials and anti-fraud groups in the U.S. and Canada report many such examples of wire fraud and mail fraud, commonly involving the illusory promise of sweepstakes winnings.

A. *Sophisticated Criminal "Company" Operations*

Our investigation has indicated that cross-border fraud outfits are very often just such "boiler room" schemes, in which hundreds of people may be involved, operating out of warehouses in Canada with dozens of telephone lines and making calls perhaps 16 hours out of each day, seven days a week. Through such an organization, the criminals are able to add an additional patina of seeming credibility, because "pitchers" are able to "transfer" victims between different levels of "corporate management" – or even refer them to "officials" or "attorneys" at a "different" facility – thus creating the illusion that the victim is "finalizing" the prize-winnings process through a large, legitimate Canadian corporate, legal, or government infrastructure. (The reality, of course, is that

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7 Susan M. Collins, "Canadian scam artists targeting American seniors," *Star Herald* (May 2, 2001), at 4A.

all these different "offices" are run and operated by the same group of people and may even be sitting in the same room.)

Cross-border fraud outfits – and particularly large and elaborate "boiler room" operations – are not always wholly covert activities. Instead, such "companies" may sometimes operate as spinoffs or shady subsidiaries of other businesses. In either case, they thrive through a pattern of deception that begins with their trade names. One of the most notorious cross-border fraud cases, for example, was run by a man named James Blair Down who variously was doing business as (d.b.a.) *Winner's Marketing; World Project Management*, *TC Interglobe Services*, and *C-W Agencies Inc.* Another significant cross-border fraud case was run by a man named Michael Levy, d.b.a. *Windermere Big*, *Win International Inc.*, *Marathon Award Center, Inc.*, *Marathon Award Center, Inc.*, and *Sunshine Fortuity Inc.*

Nor do such "boiler room" operations necessarily operate in isolation. Rather, the Canadian telemarketing fraud community is in some respects a closely-connected network in which criminals share information on successful "pitches" and purchase or trade victim lists among themselves. Not content merely to transfer victims between different "offices' within the same "boiler room," some operations may even hand off their victims to other fraud rings who may have further luck with their own, distinctive "pitch." ("Corporate" d.b.a. names change frequently, of course, but reported hand-off firms of which we are aware include *Prepaid Legal Services*, *BSI Premium Bonds*, *ERS Holdings Ltd*, *ITH Enterprises Ltd*, *Canadian Prepaid Legal Services, Inc.*, and *NAAG Holdings Ltd.* Such outfits apparently specialize in convincing victims that they are finalizing the detailed "legal" aspects of claiming a prize.)

Through the use of multiple internal "offices," multiple d.b.a. "company names," and such hand-off firms, Canadian "boiler rooms" may be able to swindle the same person repeatedly – either by operating under various names within the same fraud (as in the Morin example) or simply by presenting the unsuspecting victim with a "stroke of luck" in the form of "winning" responses by multiple sweepstakes companies.

B. *Deceptive Marketing Techniques*

(1) *Multiple Addresses*

To further foster the illusion that these "boiler rooms" are legitimate companies, they commonly open multiple post office boxes at commercial "mail box" stores. This is the postal analogue to multiple-"office" telephone transfer schemes: victims are given different contact "addresses" for each caller, adding to the apparent legitimacy of the transaction. Instead of being called merely "post office boxes" – a term which might suggest a degree of impermanence – each box is often described as a separate "suite" at the street address of the "mail box" store. (Pursuant to a rule promulgated by the United States Postal Service in 2000 and that will take effect in August of this year, the U.S. soon will prohibit the delivery of mail to post office boxes through the use of

"suite" addresses. This rule will require box-delivered mail to be specifically marked "PMB" [for "private mail box"] or simply with a "#."[8] Canadian law contains no such restriction.)

(2) *"Reloading"*

Our investigation also revealed the proliferation of "reloading" schemes of the sort Senator Collins described in her *Star Herald* column. A "reloading" pitch might purport to be from law enforcement authorities or attorneys seeking to "return" money lost to the victim in a previous scam and requesting certain "attorneys' fees" or other up-front charges in order to complete the transaction. These efforts aim in particular to play upon the victim's hurt and embarrassment from being defrauded previously – which can sometimes be parlayed into such relief at the prospect of being able to recoup the stolen funds that the victim fails to suspect that this call is *also* a hoax.

"Reloading" is facilitated by a sophisticated network of information-swapping between telemarketing fraud operations. In such schemes, a victim who initially responds to a fraudulent telemarketer or fraudulent mailing is subsequently put on a "sucker" or "mooch" list, which is then sold to other fraudulent telemarketers. This list contains the victim's name, address and telephone number, as well as pertinent information collected during previous fraud "pitcher" conversations that might be useful to future callers, such as:

- the status of the victim's spouse (*i.e.*, in nursing home, poor health, or dead);
- the victim's financial standing, perhaps including the balance in one or more bank accounts;
- the victim's relationship with other family members, children or grandchildren (*e.g.*, close contacts, estrangement, ongoing disputes);
- how much money the victim has lost to previous fraud schemes; and
- what promotional "prizes," if any, the victim has received in the past in connection with other fraud "pitches."

Such lists may be sold from one "boiler room" to the next for a few dollars per name. In return for such an investment, other con artists can feel much more confident that they are well equipped to feign familiarity with the victim, prior contacts with a child or other close relative, or prior "experience" with the victim's "case," thus adding to the perceived legitimacy of yet another scam.

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[8] *See* 65 FR 49917.

This "reloading" procedure also tends to snowball, with fraud "pitches" arriving with increasing frequency as ever more fraud rings trade "sucker lists" amongst themselves. The sad result of this is that the most vulnerable individuals – that is, those who demonstrate a susceptibility to such trickery – end up being singled out for further victimization with increasing frequency. We have encountered senior citizen victims who have fallen for repeated reloading scams as many as five or six times.

(3) *Deceptive Mailings*

Nor is this process limited to telephonic overtures alone. As PSI's deceptive mailings hearings demonstrated, even artfully-crafted *real* sweepstakes mailings can prove profoundly misleading to many persons, especially senior citizens. Cross-border criminals can thus gain further advantage from postal "pitches" too, including not only aggressive sweepstakes mailings but also official-looking letterhead correspondence purporting to be from Canadian "government" departments of "law offices" – and all without the inconvenience of having to be even *arguably* true.

Once they have been "put on a list" and subjected to the "reloading" process, in fact, many victims can receive as many as 10 to 20 mailings *in a day*. The mailings commonly describe additional lotteries or sweepstakes offers the victim has supposedly won. (Even when subjected to purported winnings from multiple sweepstakes, some individuals – especially the elderly – may conclude not that they have been singled out for their credulity but that they have been in some sense "chosen" or otherwise specially favored by God or Fate.)

Deceptive mailings may utilize a variety of techniques, including the following:

- Using a variant of a legitimate organization's name (*e.g.*, the operation reportedly run by David John Edwin Hyde, who used the name "NAAG Holdings Ltd." – perhaps in a somewhat ironic attempt to encourage victims associate it with the National Association of Attorneys General [NAAG], which is very active in the fight against cross-border fraud);

- Using envelopes – and symbols on such envelops – that give the impression that the mail originated with a government agency;

- Sending multiple letters and promotions, all using different postal box (or "suite") numbers, but in fact sent by the same fraudulent telemarketer, all promoting close variations upon the same lottery or sweepstakes scheme; and

- Providing "authentic" written requests – or "confirming" or "authenticating" requests made by oral "pitchers" – for payments described as processing or handling fees, taxes, or duties.

(4) *Small "Prizes"*

Another tactic used by cross-border fraud operations is to buttress the apparent legitimacy of promised future prize winnings by rewarding victims with small interim or "bonus" prizes. Such prizes are, of course, invariably of less value than the amount of money the victims have by that point *already payed* in "installments" toward the total fee necessary in order to "claim their winnings."

(5) *Harassing Telephone Calls*

Our work on cross-border fraud also made clear that as part of "pitchers" high-pressure tactics, victims can receive as many as five to 10 telephone calls a day – including many at inappropriate times (*e.g.*, late at night). Such calls may take a variety of different approaches, either offering completely new prize "pitches" or offering seemingly legitimate and increasingly insistent follow-up on previously-announced "winnings." Such overtures may include announcements that additional fees or taxes are owed, that earlier calculations had been mistakenly underestimated, or that the victim's failure to pay more promptly has accrued additional charges in fees or interest.

In instructing victims on how to make such fraudulent payments, cross-border criminals seem to prefer cashier's checks sent via regular first-class mail. This leaves less of a paper trail than registered letters, overnight-delivery express mail services, or certified checks. In this way do they further take advantage of the elderly: the relative lack of clear paper records makes it easier to convince someone who has come to distrust his or her short-term memory that additional payments are needed. A sparse paper trail also makes it harder for families or law enforcement officials later to ascertain exactly how much money has actually been delivered – and to whom.

Most of the victims with whom we have spoken maintained exceedingly poor records of such money transfers, for example, greatly complicating PSI's efforts to ascertain the details of their cases. To track down additional information on wire transfers made to Canada by Leon Hersom, for instance, we had to serve Western Union with a subpoena because Hersom had retained records of only one of his several large transfers.

IV. *Existing Laws*

A. *U.S. Federal Statutes*

Among the United States federal statutes relevant to cross-border fraud crime-fighting are the following:

- 15 U.S.C. § 6104 – allows private citizens to bring suit in federal court against fraudulent telemarketers who violate the FTC's "Telemarketing Sales Rule";

- 18 U.S.C. § 2325 – defines "telemarketing" as a plan, program, promotion, or campaign that is conducted to induce purchases or goods or services or solicits the participation in a sweepstakes by use of at least one telephone call across state lines initiated by the person perpetrating the crime;

- 18 U.S.C. § 2326 – allows for an additional penalty to be imposed upon a person who is convicted of an offense under §§ 1028, 1029, 1341, 1342, 1343, or 1344, or a conspiracy to commit such an offense, in connection with the conduct of telemarketing;

  Note: Under this provision, the defendant shall be imprisoned for a term of up to five years in addition to any term of imprisonment imposed under any of the sections mentioned. In the event that the defendant has victimized ten or more persons over the age of 55 – or targeted persons over the age of 55 – he shall be imprisoned for a term of up to ten years in addition to any term of imprisonment imposed under any of those sections.

- 18 U.S.C. § 2327 – allows the courts to impose mandatory restitution upon the defendant in connection with all crimes for which the 18 U.S.C. § 2326 enhanced penalty is available;

- 18 U.S.C. § 1341 – makes it unlawful to defraud an individual of money or property while utilizing false pretenses by means of the Postal Service;

- 18 U.S.C. § 1342 – makes it unlawful for anyone violating § 1341 to use a fictitious name, title, or address in the perpetration of the offense;

- 18 U.S.C. § 1343 – makes it unlawful for anyone to devise any scheme to defraud or obtain money or property by means of false pretenses while utilizing any writings, signs, signals, pictures, or sounds for the purpose of executing such a scheme;

- 18 U.S.C. § 1344 – makes it unlawful for anyone to knowingly execute, or attempt to execute, a scheme to defraud a financial institution or to obtain any assets owned or under the custodial care and control of a financial institution;

- 39 U.S.C. § 3003 – allows the Postal Service, upon evidence that a person is using a fictitious name in order to carry on an activity in violations of 18 U.S.C. §§ 1302, 1341, and 1342 to withhold mail delivery and require the claimant to furnish proof of their right to receive mail;

- 39 U.S.C. § 3005 – allows the Postal Service, upon evidence that a person is engaged in conducting a scheme for obtaining money or property through the mail by means of false representations, including the mailing of prohibited matter or conducting a lottery or lottery chance, to decline to deliver such mail;

- 47 U.S.C. § 227 – places restrictions on the use of automatic telephone dialing systems in telephone solicitations, making it illegal to initiate a telephone call to a residential telephone line using an automatic dialing system without prior express consent of the party called; and

- 16 C.F.R. § 310 – this is the FTC's "Telemarketing Sales Rule," which is enforced primarily by the FTC and state Attorneys General in U.S. federal courts.

- D042.2.6e of the Domestic Mail Manual – this is a rule proposed by the U.S. Postal Inspection Service (USPIS) last year that will go into effect in August 2001 which would require private mailbox holders to designate their mail box by using "PMB" (for "private mail box") or simply the "#" symbol in front of their mailbox number.

  Note: This rule will prohibit the use of "Suite" to describe a mail box number – a common practice by fraud operators wishing to pass off a simple mail box as the location of a legitimate business or office.

Finally, it is worth noting that it is illegal under U.S. law to sell foreign lottery tickets in the United States.

U.S. rules relating to extraterritorial jurisdiction – *i.e.*, the willingness of U.S. courts to permit actions under law against foreign defendants – are complicated. In civil litigation, however, federal courts in recent years have relaxed their traditional presumption against extraterritoriality, provided that Congress makes its intent clear that it wishes a particular law to apply to foreigners.[9] With regard to criminal jurisdiction, the trend is toward extending the reach of substantive criminal laws beyond national borders and towards easing the hurdles to be overcome to bring offenders within a national court's jurisdiction. (Substantial challenges to successful prosecution, however,

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9 The U.S. Supreme Court, for example, has limited the defenses available to foreign defendants faced with U.S. suits – requiring them to show not only that their conduct, declared illegal by the United States, was not only legal in their home jurisdiction but that their home government somehow *compelled* them to engage in this practice. *See, e.g.*, *Hartford Fire Insurance* v. *California*, 509 U.S. 764 (1993); *see generally*, Harold H. Koh, "International Business Transactions in United States Courts," private reprint from *Recuil des cours*, vol. 261 (the Hague: Academy of International Law, 1996), at 68-75.

must still be overcome – not least of all, the need to reduce the perception held by many law enforcement officials that extraterritorial prosecutions are less worthy, and more difficult, than they actually are.)

B. *U.S. State Laws*

A number of states have laws that also pertain to telemarketing fraud, including Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Kansas, Kentucky, New York, Ohio, Tennessee, and Utah. Moreover, some states – including Arkansas, California, Florida, Minnesota, Nevada, North Carolina, and Pennsylvania – specifically provide for enhanced civil penalties against defendants whose actions affect victims over 60 years of age. Others, including Connecticut, Georgia and Illinois, provide enhanced *criminal* penalties where victims are over 60 years of age.[10]

C. *Canadian Laws*

Canadian law enforcement authorities also have a number of statutes which help equip them to fight fraud, including:

- Martin's Criminal Code § 390(1)(a) – prohibits fraud affecting the public market;
- Competition Act Criminal Code § 52.1 – prohibits misrepresentation of a product or service, or misrepresentation of credit card data; and
- British Columbia Trade Practices Act (TPA) – this is a provincial statute enforced by the Attorney General of British Columbia.

According to U.S. Department of Justice (DOJ) officials, moreover, Canada has also recently amended its laws in order to provide for a federal-level telemarketing fraud offense. Since no such federal offense apparently existed before this move, the amendment represents a significant improvement.

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10 Some jurisdictions – including California, District of Columbia, Georgia, North Carolina and Utah – also have laws specifically dealing with elder abuse, which may or may not be implicated in a particular fraud case. Arizona, California, Florida, Illinois, Iowa, Massachusetts, Montana, Oregon, South Carolina, Vermont, and Washington also have rules for mandatory reporting by doctors and peace officers who suspect that elderly person has been subjected to abuse.

V. *Law Enforcement Activities*

A. *U.S. Federal*

A variety of U.S. federal agencies play a role in fighting cross-border fraud. The U.S. Postal Inspection Service (USPIS) conducts undercover operations and provides "mail covers" related to telemarketing fraud investigations. (Mail covers are investigative operations in which record is kept of the addresses from which a suspect receives mail and/or to which he sends it. They do not involve actually *opening* such correspondence, which would require a judicial search warrant.) The FBI assists with interstate investigative issues and undercover operations, while the U.S. Secret Service (USSS) has specific (non-exclusive) jurisdiction over financial crimes, including telemarketing fraud. The USSS has concurrent jurisdiction with the Department of Justice (DOJ) to investigate fraud, both civilly and criminally.

The Federal Trade Commission (FTC) accepts written, telephonic and now even e-mail complaints from consumers about various types of fraud. When significant numbers of complaints have been received, the FTC may investigate a specific company or refer the matter to another law enforcement authority. Significantly, the FTC also maintains a computerized database called "Consumer Sentinel."

The Consumer Sentinel database is accessible by United States and Canadian law enforcement officials, and is designed to provide them with rapid access to such things as telemarketing and Internet fraud complaints. This system also provides law enforcement officials with several other important services: an interagency alert board wherein users can post their concerns and remain current with telemarketing fraud problems in other jurisdictions; a directory of other Consumer Sentinel users; access to the National Tape Library; and access to publications such as the Consumer Sentinel newsletter, *Fraudbusters*, and the NAAG's *Telemarketing Bulletin*.

There are currently 195 agencies that utilize Consumer Sentinel, including the various state Attorney General's Offices, the Canadian "Phonebusters" program, the Better Business Bureau, and the National Fraud Information Center. The FTC also recently established a Consumer Response Center staffed with consumer counselors whose job it is to receive complaint information from citizens and send it to the appropriate law enforcement agency.

B. *State and Local*

The National Association of Attorney Generals (NAAG) has served as the coordinating organization for telemarketing fraud enforcement training for the past four years. NAAG has trained over 700 state and local investigators and prosecutors from the U.S. and Canada, and has recently begun also using Canadian law enforcement officers as instructors.

Some law enforcement officials have suggested to us that it might be useful for law enforcement agencies to put more emphasis upon obtaining prompt restitution for fraud victims than

even upon putting perpetrators behind bars. These officials fear that because so many victims are elderly, they may pass away before the wheels of justice turn sufficiently to send the criminals to prison.

Some states are also reportedly considering legislation to have offenders reimburse the government for costs related to investigating and prosecuting their criminal activity – apparently in an effort to reduce the deterrent effect that pursuing low-dollar-value individual cases may have upon prosecutorial decision-making. (Some state and local authorities have also begun to invite senior volunteers to appear as "court watchers" at court hearings in which other senior citizens are the victims. They report that simply having other senior citizens in the courtroom has helped underline the harm that defendants' activities can cause: judges reportedly impose bonds $10,000 to $50,000 greater when such "court watchers" are present.[11])

Another interesting state initiative is the so-called National Tape Library in San Diego. The Library is a collection of tape recordings of fraudulent telemarketing sales calls that various law enforcement agencies have collected during the course of their investigations. This database was started by two Assistant State's Attorneys from Iowa who began the collection after receiving numerous calls from consumers regarding telemarketing fraud. The Library is currently maintained by the FTC and 17 different Attorney Generals' Offices. Its records include several useful types of information: the name, address and telephone number of the company the telemarketer purports to represent; the name the salesperson used (and any aliases); voice examples of individual salespersons; types of approach used in order to obtain victims' personal information; and the date and place that each recording was made.

C. *Joint U.S.-Canadian Activities*

(1) *Task Forces*

There are currently two joint task forces in operation between U.S. and Canadian law enforcement agencies, both located in Canada: Project Emptor (in Vancouver) and Project Colt (in Montreal). Both task forces came about as a result of the 1997 Clinton-Chrétien summit. Project Emptor is spearheaded by the Vancouver Commercial Crime Section, which in 1998 – as a result of the summit – was given the assignment of investigating lottery resellers and telemarketing frauds. The members of this task force consist of representatives from the Royal Canadian Mounted Police (RCMP), the Washington State Attorney General's Office, the Federal Trade Commission (FTC) and the Attorneys General for British Columbia. Project Colt is a similar effort based in Montreal, made up of Royal Canadian Mounted Police (RCMP), U.S. Customs Service, and some local Canadian officials. (The FBI began sending one of its agents on temporary rotational duty to both of these task forces in 1999.)

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[11] So, at least, reports David Kessler of the Ohio Attorney General's Office.

(2) *Mutual Legal Assistance Treaty*

The U.S.-Canada Mutual Legal Assistance Treaty (MLAT) has been in effect since January 1990. It provides formal mechanisms for cross-border information requests, which are conducted on an official level between DOJ's Office of International Affairs (OIA) and its counterpart at the Canadian Justice Ministry. The treaty contains provisions dealing with such subjects as:

- taking testimony or statements from individuals;
- providing documents, records and articles of evidence;
- serving subpoenas;
- locating and identifying individual suspects;
- extraditing individuals (through the Extradition Treaty and its Protocol);
- executing requests for searches and seizures;
- requesting other information; and
- immobilizing assets obtained through criminal activity and assisting in the eventual seizure of those assets.

Though the MLAT, Canadian and U.S. law enforcement officials can request access to such things as investigative files and telephone, bank and business records from their counterparts on the other side of the border.

Unfortunately, however, the MLAT process can take many months – and occasionally even a year – before information is formally passed across the border. This makes it particularly difficult to fight cross-border fraud, insofar as many "boiler room" fraud operations are dismantled and moved from one location to the next every few weeks.

In 1999 – as a result of high-level binational attention given to cross-border fraud issues in the wake of a meeting between President Clinton and Prime Minister Jean Chrétien in 1997 – Canada also agreed to amend the MLAT. This change, codified in Canadian law as the "Amendments to the Mutual Legal Assistance in Criminal Matters Act of 1999," allows for video teleconferencing testimony by Canadians in U.S. legal proceedings. Under these provisions, a Canadian judge, at the request of a foreign government, may compel a Canadian resident to testify as a witness in a foreign case at a properly equipped video or audio facility in Canada. (The judge can impose sanctions if the witness fails to appear or remain at the indicated place, or if the witness refuses to answer questions without an acceptable legal basis for such refusal. The judge also can compel the witness to provide documents relevant to his video-link testimony.)

(3) *Phonebusters*

Another crucial aspect of cross-border information-sharing is the pooling of fraud complaint information. Complaint-pooling can often help law enforcement authorities to discern a pattern of fraud (indicating the operation of an elaborate fraud ring or "boiler room" operation) from many otherwise seemingly "isolated" individual cases. One important locus of such pooling is

"Phonebusters," a consumer hotline that was started in 1991 by an Ontario Provincial Police (OPP) Staff Sergeant, Barry Elliot.

Phonebusters collects complaint information from U.S. and Canadian victims, and makes this information available to authorities on both sides of the border. Information in the Phonebusters database is shared with all law enforcement entities in the U.S. and Canada, and is downloaded to the FTC's own computerized "Consumer Sentinel" system on a weekly basis. Such tools allow prosecutors to analyze the number and nature of complaints received, amounts lost, suspect names (either claimed personal names or company "d.b.a" names) – thus helping them prioritize investigatory targets in their efforts to identify and shut down fraudulent telemarketers. Canadian privacy laws reportedly still restrict the amount of information that may be entered into such systems, or shared with United States officials, but considerable progress has been made in building cooperative information systems.

(4) *Extradition*

The United States-Canada Extradition Treaty was adopted in 1976, and was amended by a special Protocol in November 1991. The Treaty and Protocol are obviously critical to the success of many joint law enforcement endeavors, insofar as they are the only means by which Canadian cross-border criminals can be brought to the United States for trial and possible incarceration.

The 1991 extradition Protocol amended preexisting provisions specifying a list of extraditable offenses, replacing it with a simpler "dual criminality" approach pursuant to which each country can seek extradition for all criminal behavior that is subject to felony prosecution in both countries.

In order to secure the arrest of fugitives in flight in Canada on an urgent basis, the U.S. prosecutor seeking such arrest must work with the Office of International Affairs (OIA) at the DOJ's Criminal Division. If the fugitive can be located, and the U.S. arrest warrant and evidentiary documents are in "trial-ready" order, the Canadian prosecutor can use this information to obtain a Canadian arrest warrant and extradition paperwork.

Defendants potentially subject to extradition may chose to challenge the proceeding, and Canadian law gives them ample opportunity. Under the Canadian Charter of Rights Freedoms, a Canadian citizen has a general right to be prosecuted in Canada for offenses committed in Canada. In light of the fact that telemarketing offenses occur on both sides of the border, however, the Canadian Supreme Court has spelled out criteria for determining whether a case must be prosecuted in Canada. Under the governing case, *United States* v. *Cotroni*, courts weigh several factors:

- where the impact of an offense was felt;
- which jurisdiction has a greater interest in prosecuting the offense;
- which police force played the major role in developing the case;
- which jurisdictions have laid charges against the defendant;

- which jurisdiction has the most comprehensive case ready to proceed to trial;
- where the evidence of the defendant's alleged crime is located;
- whether the evidence is mobile or not (*e.g.*, how easy it would be to use U.S.-collected evidence in a Canadian proceeding);
- the number of defendants involved and whether they can be gathered together in one place for trial;
- the jurisdiction in which most of the acts in furtherance of the offense were committed;
- the nationality and residence of the accused; and
- the severity of the sentence the accused is likely to receive in each potential jurisdiction.

Naturally, private entities targeted by document requests and persons subject to extradition proceedings can often significantly delay cross-border progress by litigating all of these issues.

Another problem with extradition proceedings, identified by a binational working group in 1997, is that unlike U.S. law, Canada requires trial-quality evidence (*e.g.*, first-person testimony or affidavits) in extradition hearings. While Canadian authorities are reducing the burdens that this imposes upon the extradition process – for example, through the greater utilization of videotaped testimony – difficulties apparently still remain.

(5) *The 1997 Summit*

U.S.-Canada cross-border cooperation aimed at fighting such fraud took a major step forward when President Clinton and Canadian Prime Minister Jean Chrétien made cross-border fraud a major topic of discussion at their summit meeting on April 8 and 9, 1997. This meeting led directly to the establishment of the United States-Canada Working Group – the first binational effort to develop a coordinated approach to fighting telemarketing fraud. (The binational Working Group issued a report in November 1997 which made a number of specific recommendations on how to improve cross-border cooperation.) This meeting also provided the impetus for the establishment of the Project Colt and Project Emptor U.S.-Canada regional task forces.

This high-level attention also led the United States to set up law enforcement coordination "demonstration" projects at five sites[12] identified by DOJ as having both (a) a concentration of cross border fraud victims and (b) a law enforcement community dedicated to fighting this problem. (DOJ's Bureau of Justice Assistance awarded these sites grant money under an 18-month program.) In some cases – *e.g.*, the excellent relationship that has developed between the Toronto Police Department and law enforcement officials in Ohio – this process has reportedly been very effective.

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[12] The sites are Vermont (with the lead role taken by the state Attorney General's office), Los Angeles (headed by the Los Angeles District Attorney's office), Hillsboro, Florida (headed by the Florida State's Attorney's office), North Carolina (headed by the state Attorney General's office), and Georgia (headed by the state's Government Office of Consumer Affairs).

VI. *Congressional Action*

In 1994, Congress passed the "Senior Citizens Against Marketing Scams Act" (SCAMS Act) This law earmarked funds with which DOJ could conduct public awareness and prevention initiatives for senior citizens in cooperation with state and local law enforcement agencies and senior citizen advocacy organizations. It also provided enhanced penalties for defendants convicted of mail or wire fraud in connection with the conduct of telemarketing. (Additional provisions apply if ten or more persons over the age of 55 are targeted.) The law also provides for mandatory restitution.

After the passage of the SCAMS Act, DOJ selected NAAG to coordinate U.S. law enforcement training initiative on telemarketing fraud under these provisions. NAAG, in turn, developed a partnership in this regard with the National White Collar Crime Center (NWCCC) and the American Prosecutors Research Institute (APRI).

The year 1994 also saw passage of the "Telemarketing and Consumer Fraud and Abuse Prevention Act." This law strengthened the authority of the FTC to protect consumers in connection with fraudulent sales made by means of telephone calls.

In 1999, Congress passed the "Telemarketing Fraud and Seniors Protection Act," the "Seniors Safety Act," and the "Protection Against Scams on Seniors Act." These laws were designed to improve federal and state agencies' ability to track telemarketing fraud through computer databases, to provide easier access to information regarding telemarketing fraud, and to improve consumer awareness among senior citizens about the dangers they face from telemarketing fraud.

VII. *Hearing, Title, Structure and Themes*

A. *Panel One*

The first panel will consist of victims of cross-border fraud and/or their family members, as follows:

(1) *Ann Hersom* (Maine)

Ann Hersom – of Acton, Maine – is a 62-year-old woman who is married to an 82-year-old man defrauded by Canadian telemarketers. Her husband, Leon Hersom, apparently *still* believes he is going to win the Canadian lottery. Ann Hersom will describe how her husband was initially approached by a fraudulent telemarketer approximately three years ago, while she was at work in her own business (a gift shop). Without her being aware of the contacts, the fraud ring persuaded her husband to send several thousand dollars to addresses in Canada.

Hersom first discovered the constant barrage of telephone calls her husband had received from fraudulent telemarketers in January of 1999, when she was home during the day on account of

an illness. She soon realized that her husband had been immediately sending the con artists the periodic reimbursement checks he received from his insurance company for medications: upon receiving each check, he would endorse the back of it and forward it to the Canadian criminals in what he believed to be installment payments of the "back taxes" he owed on his grand prize winnings.

Because Leon Hersom did not keep records of the amounts he sent to the Canadian ring, we have not been able to confirm the exact amount of money he lost. When Ann Hersom made her complaint to Phonebusters, she estimated that her husband may have been defrauded of as much as $20,000.00. She is not sure of the amounts involved, however, although subpoenaed records we have obtained from Western Union – through which he wired at least some of his transfers – make clear that he sent at least $4,500 by that route alone.

Leon Hersom continued to send money to the fraud ring behind his wife's back – sometimes in small envelopes containing as little as $15 or $20 in cash – even after she confronted him about the issue. So convinced was he of his imminent receipt of vast "winnings," in fact, that she had to threaten him with divorce in order to get him to stop sending money.

As Ann Hersom describes it, elderly fraud victims such as her husband – with little or no ability to earn additional income in the workplace – often fear that "their money will not last as long as they do." On account of this fear, they may engage in what to others might seem foolish behavior.

(2) *Bruce Hathaway* (Ohio)

Bruce Hathaway is an 83-year-old retired Air Force officer who became a Certified Public Accountant (CPA) in the private sector after his retirement from the military. He became involved with Canadian fraudulent telemarketers approximately four years ago, after his wife suffered a stroke that required extended care in a nursing home. The bill for this care was over $4,000.00 a month, and this considerably strained his resources. As the bills mounted, he received numerous calls from Canada, encouraging his involvement in what was unfortunately just another lottery scam. Deeply distressed over his wife's condition and afraid that he would not be able to afford her continuing medical care, Hathaway was quickly in over his head and – convinced by the criminals that he had actually *won* the lottery and needed to pay "back taxes" on his "winnings" – ended up losing nearly $50,000.

Hathaway's daughter, Ann Hathaway, discovered the fraud after she moved in with him in October 1998. She reported the situation to the office of the Ohio Attorney General (AG), which thereupon began monitoring her father's telephone line, recording at least ten telephone conversations with the cross-border fraud ring. In these conversations – which will likely be used as exhibits at our hearing – Hathaway and his daughter Ann feigned continued interest while the Canadians repeatedly attempted to harassed and cajole them into sending more money.

(3) *Julia Erb* (Michigan)

Julia Erb is an elderly woman who was contacted via telephone in November 2000 by an individual who advised her that – even though Erb did not remember ever having entered – she was one of three people who had won large sweepstakes prizes. The caller requested that she provide her credit card number in order to pay for unspecified "legal fees," but assured her that once these fees were paid, she would receive "99 units of British Sterling premium savings bonds that were worth $16 million and beginning in January of 2001 she would receive $10,000 a month." (Erb was subsequently sent some pieces of paper with "British Sterling premium savings bonds" printed on them, but they were of course valueless.)

This transaction clearly placed Erb on one of the "sucker" or "mooch" lists traded between Canadian fraud outfits, because she was soon contacted by a host of other such callers. In March 2001, she receive a call from an individual who advised her that she had won $50 million in the *Australian* lottery – and that she was required to send a cashier's check for $455.00 to an address in British Columbia, Canada. Later, she was also contacted by a different person, who *also* claimed to be from the Australian lottery. *This* caller announced that she won $10 million, but had to pay $498.00 in legal fees. Erb obligingly sent this money to the specified address in British Columbia, Canada. (She received nothing in return.)

Most recently, Erb was contacted by a caller claiming to be from Madrid, Spain. This person had advised her that she had won the Spanish "El Gordo" lottery, sponsored by the King and Queen of Spain themselves. Delighted at her continuing good fortune, Erb sent them $500.00 – again to an address in British Columbia. (Indeed, *all three* of these subsequent calls – the two different "Australian" lottery callers and the "Spanish" one – gave Erb *the same mailing address in British Columbia*. Even though she noticed this, and asked the "Spaniard" about it, she sent them the requested $500.00 anyway.)

B. *U.S. and Canadian Law Enforcement Officials*

The second panel will follow our discussions with victim-witnesses with a broader examination of the nature and extent of the cross-border fraud problem.

- Staff Sergeant Barry Elliott of the Ontario Provincial Police (OPP) is the Canadian policeman who founded the Phonebusters victim hotline and had been working against telemarketing fraud, especially frauds specifically targeting senior citizens, since 1991.

- Lawrence E. Maxwell, of the U.S. Postal Inspection Service (USPIS), is the Inspector in Charge of the USPIS's Fraud, Child Exploitation, Asset Forfeiture and Money Laundering office.

- Jacqueline ("Jackie") Degenova is a representative from the Ohio AG's office, which reportedly has an excellent working relationship with provincial- and local-level Canadian law enforcement authorities. Degenova has been prosecuting telemarketing fraud cases both civilly and criminally since 1997 as the office's Deputy Chief for Consumer Protection; effective June 1, 2001, she will become Chief for Consumer Protection.

C. *U.S. Law Enforcement Officials*

Our third panel will consist of U.S. law enforcement officials who will provide their views upon current U.S.-Canada law enforcement coordination and how such coordination can be improved in the future.

- William Sorrell is Vermont's Attorney General. His office is one of the five demonstration sites chosen by the U.S. Department of Justice for an 18-month grant designed to encourage aggressive efforts to combat telemarketing and other cross-border fraud.

- Molly Warlow is Deputy Director of the Criminal Division at DOJ, and is responsible for the Department's cross-border fraud work.

- Hugh Stevenson is a cross-border fraud expert from the FTC.

Should you have any questions about this hearing or the information contained in this Republican Staff Background Memorandum, please do not hesitate to contact a member of our Cross-Border Fraud team here in SR-199 at 224-3721:

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